EXHIBIT G

Consolidated Joint Reply Comments of League of Arizona Cities and Towns, League of California Cities & League of Oregon Cities

In the Matter of Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (WT Docket No. 17-79, WC Docket No. 17-84)

[appears behind this coversheet]

EXHIBIT G

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

IN THE MATTER OF	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WT Docket No. 17-79
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WC Docket No. 17-84

CONSOLIDATED JOINT REPLY COMMENTS OF LEAGUE OF ARIZONA CITIES AND TOWNS, LEAGUE OF CALIFORNIA CITIES & LEAGUE OF OREGON CITIES

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STATEMENT OF INTEREST OF LOCAL GOVERNMENTS

The League of Arizona Cities and Towns is a voluntary membership organization of the 91 incorporated cities and towns across the state of Arizona, from the smallest towns of only a few hundred in population, to the largest cities with hundreds of thousands in population. The League provides vital services and tools to its members, including representing the interests of cities and towns before the legislature and courts.

The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety and welfare of their residents, and to enhance the quality of life for all Californians.

The League of Oregon Cities, originally founded in 1925, is an intergovernmental entity consisting of Oregon's 241 incorporated cities that was formed to be, among other things, the effective and collective voice of Oregon's cities before the legislative assembly and state and federal courts.

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I. INTRODUCTION

The League of Arizona Cities and Towns, the League of California Cities and the League of Oregon Cities (collectively, "Local Governments") offers these consolidated joint reply comments in response to the comments filed in the Commission's Notice of Proposed Rulemaking and Notice of Inquiry regarding wireless broadband deployment as well as the Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment regarding wireline broadband deployment.[1] Although Local Governments filed separate comments in the above-captioned proceedings, these reply comments are combined to more directly respond to the industry commenters who combined the legal and factual issues in connection with these different services and the facilities that deliver them.

The record in these proceedings, like the record in *In re Mobilitie Petition*, make it clear that the Commission lacks the authority and the factual predicate for the proposed interpretations for sections 332(c)(7) and 253. Specifically, the Commission should find that:

- The Commission lacks authority to impose a deemed-granted remedy for mere failure to act under § 332(c)(7)(B)(ii) because § 332(c)(7)(B)(v) and its related Congressional history unambiguously vest exclusive authority in the courts to resolve disputes.

- The Commission lacks authority to truncate the shot clock, either by reducing the overall timeframe or by expanding its scope to include activities that occur before or after a duly filed request is received, because such a rule would frustrate Congress' intent to allow the usual timeframe for a decision under applicable local law.

- Alleged delays in the deployment process are often attributable to acts or omissions by the applicant, and further limitations on State or local governments would (i) have little (if any) impact on deployment and (ii) create perverse incentives to game the shot clock.

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[1] *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Notice of Proposed Rulemaking and Notice of Inquiry* (Apr. 20, 2017) [hereinafter "*Wireless NPRM/NOI*"]; *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, (Apr. 21, 2017) [hereinafter "*Wireline NOI*"].

- Sections 332(c)(7) and 253 regulate different services provided through different facilities and therefore should not be harmonized.

These consolidated joint reply comments highlight the deficiencies in the industry comments. In addition, Local Governments responds to the instances where industry comments identified allegedly bad actors within its constituency and provides the Commission with some real-world examples to show how the public health, safety and welfare benefits from reasonable State and local control over the public rights-of-way.

II. INDUSTRY COMMENTS FAIL TO SHOW A LEGAL OR FACTUAL BASIS FOR A DEEMED-GRANTED REMEDY, SHORTER SHOT CLOCKS OR NEW SHOT CLOCKS

A. The Commission Cannot and Should Not Impose a Deemed-Granted Remedy for Mere Failures to Act within a Presumptively Reasonable Time

Section 332(c)(7)(B)(v) unambiguously vests authority to resolve disputes over failures to act in the courts. Industry commenters fail to explain what ambiguity serves as the basis for the Commission's interpretive authority, and further fail to show any substantial evidence that such a remedy is necessary. Accordingly, the Commission should find that it lacks authority to interpret a deemed-granted remedy for a mere failure to act under § 332(c)(7)(B)(ii).

1. Commission Authority to Interpret § 332(c)(7) is Not Unlimited, and § 332(c)(7)(B)(v) Precludes a Deemed-Granted Remedy Because it Unambiguously Vests Exclusive Authority to Resolve Timeliness Disputes with the Courts

A general theme in industry comments seems to be that the *Arlington* cases stand for the proposition that the Commission wields unlimited authority to interpret § 332(c)(7) however the Commission deems fit.[2] For example, Lightower boldly contends that "there is no legal limitation

[2] *See, e.g.*, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of AT&T*, at 9 (June 15, 2017) [hereinafter "AT&T Comments"]; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of CTIA*, at 15 (June 15, 2017) [hereinafter "CTIA Comments"]; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure*

on the Commission's authority to interpret statutory definitions."[3] This contention is obviously false.

As the Supreme Court explained in *Arlington II*, the Commission's interpretive authority is limited to what the ambiguity in the statute will fairly allow.[4] Rather than grapple with the real legal issue (*i.e.*, what the ambiguity would fairly allow), Lightower and many other industry commenters chant the name "*Arlington*" like a magic charm to ward off judicial review.

Reluctance to deal with the limitations on the Commission's authority is understandable given that "Congress has directly spoken to the precise question at issue."[5] The plain language in sections 332(c)(7)(B) and 253, and the related Congressional histories clearly establish the courts as the exclusive recourse for applicants aggrieved by an alleged failure to act within a reasonable time.[6]

Although the Fifth Circuit in *Arlington I* noted that § 332(c)(7) does not preclude the Commission's interpretive guidance to the courts, the Supreme Court's holding in *Arlington II* cabins that interpretive guidance to only ambiguous statutory provisions. Neither court held that the Commission could interpret an unambiguous provision like § 332(c)(7)(B)(v), which vests exclusive jurisdiction with the courts to resolve disputes over unreasonable delays.

Investment et al., WT Docket No. 17-79, WC Docket No. 17-84, *Comments of Verizon*, at 37 (June 15, 2017) [hereinafter "Verizon Comments"].

[3] *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Initial Comments of Lightower Fiber Networks*, at 6 (June 15, 2017) [hereinafter "Lightower Comments"].

[4] *See Arlington v. FCC*, 133 S.Ct. 1863, 1874 (2013) ("*Arlington II*").

[5] *See Chevron USA, Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984).

[6] *See generally In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Joint Comments of League of Arizona Cities and Towns et al.*, at 14-23 (June 15, 2017) [hereinafter "Local Gov'ts Comments"].

i. Remedies for § 332(c)(7) and other Statutes with a Deemed-Granted Remedy Cannot Be "Harmonized" Because These Different Statutes Use Different Language to Describe Different Obligations for Different Facilities

Some industry commenters urge the Commission to "harmonize" the remedies for a failure to act under § 332(c)(7)(B) with a failure to act under other statutes that allow for a deemed-granted approach.[7] As more fully explained in Local Governments' principal comments, comparisons between a failure to act under § 332(c)(7)(B)(ii) and failures to act in other contexts do not account for critical differences in statutory construction.[8]

ExteNet and CTIA argue that the remedies under § 332(c)(7) should be aligned with the deemed-granted remedy in § 6409(a).[9] Although the same language in the same act should generally be construed to mean the same thing, these statutes use starkly different language. The requirement in § 332(c)(7)(B)(ii) that state and local governments act within a reasonable time under the circumstances bears no material resemblance to the mandate in § 6409(a) that state and local governments "shall approve and may not deny any eligible facilities request." CTIA also points to § 621(a)(1) as another example where a failure to act results in a deemed granted approval.[10] However, the express language in the statutory provisions related to cable franchises provide for a deemed-granted remedy but no such provision exists in § 332(c)(7).[11]

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[7] *See, e.g., In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of ExteNet Sys., Inc.*, at 13 (June 15, 2017) [hereinafter "ExteNet Comments"].

[8] *See* Local Gov'ts Comments at 19.

[9] *See* ExteNet Comments at 13; CTIA Comments at 12.

[10] *See* CTIA Comments at 10.

[11] *See* 47 U.S.C. § 541(a)(1) ("[A] franchising authority may not . . . unreasonably refuse to award an additional competitive franchise."); *id.* § 537 ("If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.").

Accordingly, the Commission should find that remedies under sections 332(c)(7)(B)(ii), 6409(a), 621(a)(1) and other similar statutes should not and cannot be harmonized because each uses different language for a different purpose.

ii. Section 253(a) Does Not Authorize a Deemed-Granted Remedy for Failures to Act on Applications for Wireless Broadband Facilities

ExteNet raises a novel argument that a failure to act on a wireless facilities application could be subject to a deemed grant because it violates § 253(a).[12] The problem with this argument is that § 253(a) does not apply to wireless deployments because such facilities provide an information service rather than a telecommunications service. Moreover, as explained in Local Governments' principal comments, this argument will soon also fail in the wireline context to the extent that the Commission follows through on its intent to recast wireline broadband as an information service. Accordingly, the Commission should find that it lacks the legal authority to impose a deemed-granted remedy for a mere failure to act within the presumptively reasonable timeframes.

2. The Record Lacks a Reliable Factual Record that Shows Any Need for a Deemed-Granted Remedy

In addition to the insurmountable fact that no ambiguity in § 332(c)(7)(B) would fairly allow for a deemed-granted remedy, the record does not contain substantial evidence that municipalities routinely fail to meet the shot clock deadlines or allow the Commission to draw a rational connection between the facts found and the proposed rules.[13] Rather, as Local Governments and other commenters show, delays are often caused by applicants who fail to follow (and sometimes willfully ignore) local application requirements.

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[12] *See* ExteNet Comments at 14.

[13] *See Motor Vehicles Mfgs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983).

i. Industry Comments Generally Fail to Produce Any Substantial Evidence to Justify the Proposed and Requested Rules

Despite the Commission's direction in these proceedings that anecdotal evidence would be discounted, wireless industry commenters generally provided *more* anecdotes than ever before.[14] The record offered by industry stakeholders is replete with unidentified jurisdictions. Worse still, most industry comments cite unsupported and unverifiable anecdotes from other industry comments in the *In re Mobilitie Petition* proceeding in a hopelessly circular attempt to establish facts through repetition rather than reality.[15]

As Smart Communities points out in their comments, only Crown Castle made a meaningful effort to name allegedly bad actors.[16] However, Local Governments rebutted this "evidence" with more concrete facts that showed the maligned municipalities acted reasonably under the circumstances.[17] Moreover, even if the Commission accepted Crown Castle's claims as true, the record from the *In re Mobilitie Petition* would show only that less than 1% of municipalities in the United States engaged in misconduct.[18]

All this hardly amounts to substantial evidence needed to sustain a deemed-granted remedy. Accordingly, the Commission should find that a deemed-granted remedy is not warranted.

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[14] *See Wireless NRPM/NOI* at 6 n.9.

[15] *See, e.g.*, ExteNet Comments at 6; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of Mobilitie, LLC*, at 2 (June 15, 2017) [hereinafter "Mobilitie Comments"]; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of Sprint Corp.*, at 37 (June 15, 2017) [hereinafter "Sprint Comments"]; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of T-Mobile USA, Inc.*, at 7 (June 15, 2017) [hereinafter "T-Mobile Comments"]; Verizon Comments at 6 n.19.

[16] *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Smart Communities and Special Dists. Coal.*, at 9 (June 15, 2017) [hereinafter "Smart Communities Comments"].

[17] *See In the Matter of Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies*, WT Docket No. 16-421, *Joint Reply Comments of League of Arizona Cities and Towns et al.*, at 1-5 (Apr. 7, 2017) [hereinafter "Local Gov'ts Mobilitie Reply Comments"].

[18] *See* Smart Communities Comments at 9.

ii. Applicant Misconduct Accounts for a Significant Share in Alleged Deployment Delays, and a Deemed-Granted Remedy Would Improperly Reward Such Bad Behavior

Several industry commenters claim that their generally unsupported anecdotal evidence about lengthy delays shows that local governments simply ignore the presumptively reasonable timeframes.[19] These anecdotal stories conveniently omit to mention the often months-long delays are caused by applicants who submit wholly inadequate applications in piecemeal fashion and then disappear for weeks at a time after the local government properly deems the "application" incomplete.[20] A deemed-granted remedy would merely reward an applicant's misconduct, a result "so implausible it could not be ascribed to a difference in view or the product of [the Commission's] expertise."[21]

Moreover, the assumption that a local government that fails to meet the presumptively reasonable timeframe ignores the fact that the *2009 Declaratory Ruling* anticipated that some projects would require more time to review.[22] To the extent that any anecdotal stories (or "statistics" derived from these anecdotes) from the industry comments turn out to be true, the Commission would need to take a hard look at each instance to determine whether the "nature and scope of the request" reasonably required more than the presumptively reasonable timeframe for review.

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[19] *See, e.g.*, AT&T Comments at 25; Lightower Comments at 7; ExteNet Comments at 5–8.
[20] *See, e.g.*, Local Gov'ts Comments at 1–10; *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Practices*, WT Docket No. 16-421, *Joint Comments of League of Arizona Cities and Towns et al.*, at 10-21 (Mar. 8, 2017) [hereinafter "Local Gov'ts Mobilitie Comments"]; Local Gov'ts Mobilitie Reply Comments at 5.
[21] *See Motor Vehicles Mfgs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[22] *See In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(C)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, Declaratory Ruling*, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd. 13994, 14006-07, ¶ 34 n.111 (Nov. 18, 2009) [hereinafter "*2009 Declaratory Ruling*"].

Accordingly, the Commission should not accept the premise that all delays stem from local government misconduct. Given the factual record before the Commission that applicants' own misconduct significantly contributes the allegedly unreasonable delays, a deemed-granted remedy would not bear a rational connection to the facts.

iii. Expedience Does Not Permit the Commission to Usurp the Courts' Exclusive Role under § 332(c)(7)(B)(ii)

Industry commenters generally assume that a proposed deemed-granted remedy will speed up deployment by, among other things, obviating the need for litigation.[23] The bare assertion that administrative remedies might be more convenient for aggrieved applicants does not license the Commission to usurp the courts' exclusive role in disputes under § 332(c)(7)(B)(ii).[24]

3. If the Commission Attempts to Impose a Deemed-Granted Remedy, an Authorization to Proceed with Construction without Health and Safety Review Puts People and Property in Serious Peril

Local Governments oppose in the strongest possible terms AT&T's and CCA's proposed rules that would authorize applicants to commence construction without prior health and safety review and approval.[25] The Commission should categorically reject this dangerous proposal that would put public safety in hands primarily motivated by speed-to-market.

Unauthorized and unregulated deployment already occurs and results in significant damages. As the California Public Utilities Commission noted:

> [U]tility poles overloaded with unauthorized attachments, as well as poorly-maintained telecommunications and electrical supply lines, have led to serious service outages, including E9-1-1 service outages. Worse, they set off wildfires that have burned hundreds of square miles of state land and ***killed at least ten people.***

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[23] *See, e.g.*, CTIA Comments at 9–10.
[24] *See, e.g.*, Lightower Comments at 6.
[25] *See* AT&T Comments at 26; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WT Docket No. 15-180, WC Docket No. 17-84, *Comments of Competitive Carriers Ass'n*, at 13 (June 15, 2017) [hereinafter "CCA Comments"].

> Some of those people were electrocuted when the poles came down. The others burned to death.
>
> . . .
>
> Safety is not an accident. The potential consequences of these rules could force poorly reviewed projects through truncated coordination with safety agencies (fire, forestry, flood protection, highway agencies, etc.), resulting in more downed poles, more fires, more property destruction, and more deaths.[26]

A rule that would sanction unregulated deployment without even the bare minimum ministerial health and safety review would inevitably lead to an increase in similarly avoidable tragedies.

The Commission rejected similar proposals in the *2009 Declaratory Ruling*, and expressly contemplated that courts could mandate that local governments issue the permits on a case-by-case basis.[27] Even in situations where it would be appropriate to order a local government to approve a proposed installation, there is simply no reason to excuse the applicant from a universally applicable requirement to demonstrate compliance with all public health and safety regulations.

B. Shorter and New Shot Clocks Exceed the Commission's Authority to the Extent that Such Regulations Would Effectively Prevent Local Review or Are Otherwise Based on Unsupported Assertions and Arbitrary Distinctions

Several industry commenters requested that the Commission truncate the presumptively reasonable timeframe for collocations from 90 days to 60 days, and for all other sites from 150 days to 90 days.[28] However, these commenters similarly overstate the Commission's authority

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[26] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WC Docket No. 17-84, WT Docket No. 17-79, *Comments of the Cal. Pub. Utils. Comm'n*, at 16-17 (June 15, 2017) (emphasis added) [hereinafter "Cal. PUC Comments"].

[27] *See 2009 Declaratory Ruling* at ¶ 39.

[28] *See, e.g.*, ExteNet Comments at 8; T-Mobile Comments at 18; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of the Wireless Internet Serv. Providers Ass'n*, at 5 (June 15, 2017); Verizon Comments at 41; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WT Docket No. 17-79, WC Docket No. 17-84, *Comments of the Computer & Commc'ns Industry Association (CCIA)*, at 10 (June 15, 2017); *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Crown Castle Int'l Corp.*, at 29 (June 15, 2017) [hereinafter "Crown Castle Wireless Comments"]; CTIA Comments at 11.

under the *Arlington* cases to create shorter shot clocks. Although the Commission may interpret a "reasonable" time under § 332(c)(7)(B)(ii), the interpretation must be "based on a permissible construction of the statute," which requires a rational connection between the facts found and the rule promulgated.[29]

Various proposals outlined below attempt to chisel away at the ordinary time for a zoning decision that Congress expressly intended to allow.[30] Such proposals aim to effectively transform local review into a ministerial-only process that would require a statutory revision by Congress rather than an administrative reinterpretation by the Commission. Accordingly, the Commission should reject proposals to truncate the shot clock, create new shot clocks or expand the shot clock to cover matters that occur before an application is duly filed and after the State or local government acts on such a duly filed request.

1. Proposed 90 and 60-day Shot Clocks Unreasonably Frustrate Local Review and Decision Processes Congress Intended to Preserve and Run Counter to the Evidence in the Record

Shot clocks cannot be so short that State and local governments cannot complete the application review and decision process. Proposals to cut the current timeframe for new sites by 40% and for discretionary collocations by 33% would in many cases effectively mandate that local officials confer "preferential treatment to the personal wireless service industry," which directly conflicts with Congressional intent.[31] Local Governments endorse collaborative and voluntary efforts to streamline application processes, but the Commission cannot effectively alter the process required under local law.

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[29] *See Arlington II*, 133 S.Ct. at 1874 (quoting *Chevron*, 467 U.S. at 842) (internal quotations omitted); *Motor Vehicles Mfgs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).
[30] *See* H.R. CONF. REP. NO. 104-458, at 208; *see also 2009 Declaratory Ruling* at ¶ 42 (finding that "Congress intended the decisional timeframe to be the 'usual period' under the circumstances for resolving zoning matters").
[31] *See* H.R. CONF. REP. NO. 104-458, at 208.

Although some industry commenters complain that the current shot-clock timeframes are unreasonable as compared to review periods for "other" users in the public rights-of-way, this analogy compares apples to oranges. Congress intended a "reasonable" period for a decision to mean the "usual" or "generally applicable time fram[e] for [a] zoning decision" by the State or local jurisdiction.[32] Congress expressly contemplated a zoning-type review and did not intend to require or prohibit any particular permit or approval.

i. Discretionary Collocation Applications Should Not be Subject to the Same 60-Day Timeframe for Review as Mandatory Eligible Facilities Requests

Several industry commenters urge the Commission align the timeframe for discretionary collocations under § 332(c)(7) with mandatory collocations under § 6409(a).[33] However, when the Commission adopted the 60-day shot clock for eligible facilities requests, it did so based on its determination that such period would be reasonable for a *nondiscretionary* determination guided by limited factors.[34]

Moreover, this proposed interpretation would run counter to the findings in the *2014 Infrastructure Order* that support structure replacements and other substantial changes to existing facilities reasonably require more than 60 days to review.[35] A 60-day shot clock for substantial changes in the public rights-of-way would also conflict with the Commission's finding that these proposals "are more likely to raise aesthetic, safety, and other issues" that would reasonably require additional time.[36] The public right-of-way is a dynamic environment in close proximity to where

[32] *See* Local Gov'ts Comments at 25–24.
[33] *See, e.g.*, CTIA Comments at 11–12.
[34] *See In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, *Report and Order*, 29 FCC Rcd. 12865, 12957 ¶ 126 (Oct. 17, 2017) ("We find that a period shorter than the 90-day period applicable to review of collocations under Section 332(c)(7) of the Communications Act is warranted to reflect the more restricted scope of review applicable to applications under Section 6409(a).") [hereinafter "*2014 Infrastructure Order*"].
[35] *See 2014 Infrastructure Order* at ¶¶ 181, 195.
[36] *See id.* at ¶ 195.

people live and work. Even relatively small changes requires coordination with these other users and uses.

ii. State Laws that Require Decisions in Shorter Timeframes are Either Applicable to Non-Discretionary Permits or Not as Short as Industry Comments Claim

Several industry commenters argue that some state statutes that require municipalities to process wireless applications within shorter timeframes justifies a new national limit on a "reasonable" review period. However, like § 6409(a), most state statutes mandate approval for *non-discretionary* applications. For example, Arizona, California, Indiana, Michigan, North Carolina, Texas and Virginia require municipalities to approve collocations to existing facilities only if the applications meet specified criteria.[37]

While Minnesota requires development projects to be approved or denied within 60 days after the applicant tenders a complete application, the process to trigger or extend the 60-day period is much more balanced and flexible than the Commission's shot clock rules.[38] For example, the initial review period resets after each timely incomplete notice; the 60-day period does not commence unless the applicant obtained all other approvals required to tender the application; and the local government can unilaterally extend the 60-day period (once and not to exceed an additional 60 days) on written notice to the applicant.[39]

2. Commenters Generally Agree that the Commission Should Not Invent New Shot-Clock Classifications Based on Height or Zoning District

[37] *See* ARIZ. REV. STAT. § 9-592, adopted in ARIZ. H.B. 2365 (2017); CAL. GOV'T CODE § 65850.6; IND. CODE. ANN. § 8-1-32.3-22; MICH. COMP. L. SERV. § 125.3514; N.C. GEN. STAT. ANN. § 160A-400.53; TEX. LOC. GOV'T CODE ANN. § 284.001, adopted in TEX. S.B. 1004 (2017); VA. CODE ANN. § 15.2-2316.4 (2017).
[38] *See* MINN. STAT. § 15.99(2)(a).
[39] *See id.* § 15.99(3).

Municipal and industry commenters alike agree that new shot-clock classifications based on height or zoning district would inject unnecessary complexity into the review process.[40] Accordingly, the Commission should abandon its proposals to create new shot clocks based on these categories.[41]

3. The Commission Should Reject Proposals to Truncate Local Review for "Small Cells" Because Such Facilities are Not Always Smaller or Less Intrusive than Macrocells

Many industry commenters posit that the 150-day shot clock for new sites should not be applicable to "small cells" because such facilities are "far less visually intrusive" than the macro cells commonly deployed around the time the Commission issued the *2009 Declaratory Ruling*.[42] However, the record clearly establishes that not all small cells are small. Many so-called small cells or microcells can be *taller* and *more visually intrusive* than macrocells.

As a prime example, AT&T and ExteNet consider "small" facilities to include those with antennas and related equipment that would be more than twice as large as the volume limits the Commission determined to be a "small cell" in the *2014 Infrastructure Order*.[43] ExteNet claims that its facilities "are often the same size or smaller than wireline and utility attachments" despite the fact that the average pole-type electrical transformer is approximately 10 cubic feet and traffic signal control boxes can be as small as four cubic feet.[44] Based on ExteNet's definition of a small

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[40] *See, e.g.*, Local Gov'ts Comments at 26; CTIA Comments at 16; T-Mobile Comments at 22.
[41] See Wireless NPRM/NOI at ¶ 18.
[42] *See* Mobilitie Comments at 5; see also Verizon Comments at 40-41; ExteNet Comments at 8-9; T-Mobile Comments at 6; CTIA Comments at 28-29; Crown Castle Wireless Comments at 52; *In the Matter of Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of the Wireless Infrastructure Ass'n*, at 21 (June 15, 2017).
[43] *Compare* ExteNet Comments at 2 (defining a small cell as one with antenna enclosures no greater than six cubic feet and associated equipment no greater than 28 cubic feet), *with 2014 Infrastructure Order* at ¶ 92 (defining a small cell as one with antenna enclosures no greater than three cubic feet and associated equipment no greater than 17 cubic feet); *see also* AT&T Comments at 22–23.
[44] *See, e.g.*, Cooper Industries, *Single-Phase Overhead Transformers* (Aug. 2015), *available at:* http://www.cooperindustries.com/content/dam/public/powersystems/resources/library/201_1phTransformers/CA201001EN.pdf (last visited July 13, 2017); McCain, Inc., *Backpack Cabinet* (Apr. 26, 2017), *available at:* http://www.mccain-inc.com/images/mccain-files/products/cut-sheets/Cabinets/Backpack_Cabinet.pdf.

cell (28 cubic-foot equipment, plus the six cubic-foot antenna arrays), ExteNet's facilities would be approximately ***240% larger*** than the average pole-mounted single-phase transformer and approximately ***600% larger*** than some traffic control cabinets. Of course, this does not include the utility equipment, cables and concealment ExteNet would exclude from the total volume calculation.

The images below illustrate the differences between what ExteNet considers "the same size or smaller than wireline and utility attachments" such as transformers and traffic control cabinets:

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EXHIBIT G

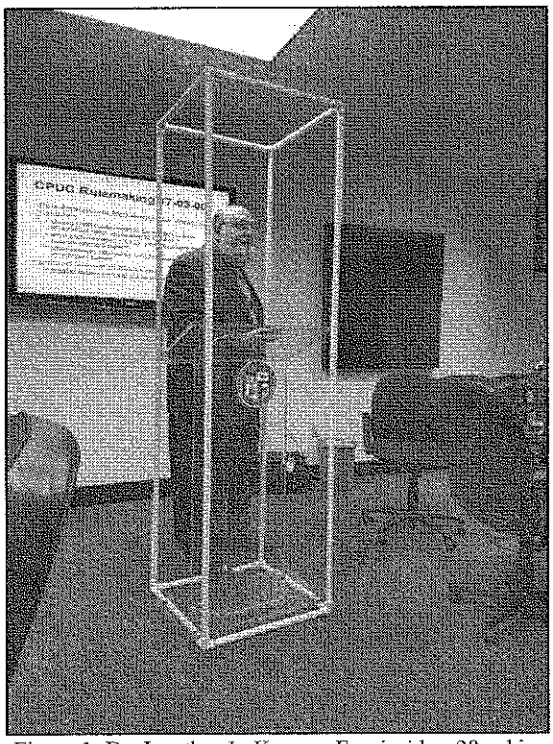

Figure 1: Dr. Jonathan L. Kramer, Esq. inside a 28 cubic-foot frame. (http://wireless.blog.law/2017/04/22/california-sb-649-big-lie-small-cells/)

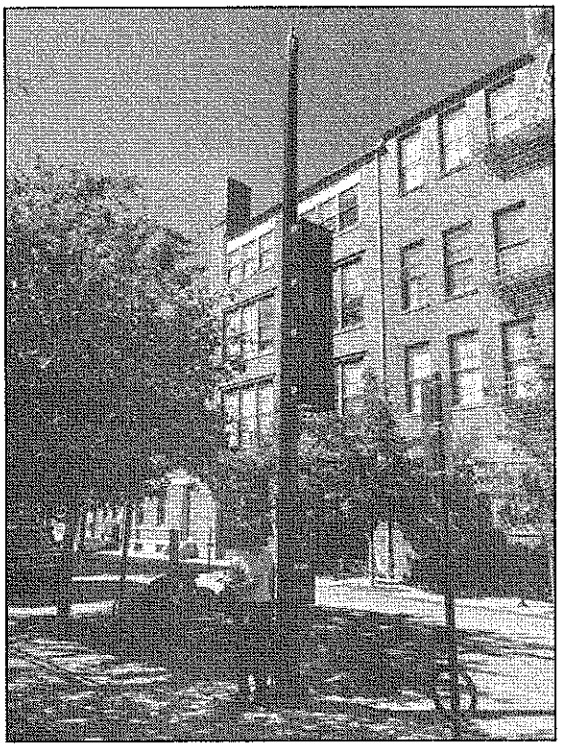

Figure 2: Cincinnati small cell with a pole-mounted 24 cubic-foot equipment shroud.

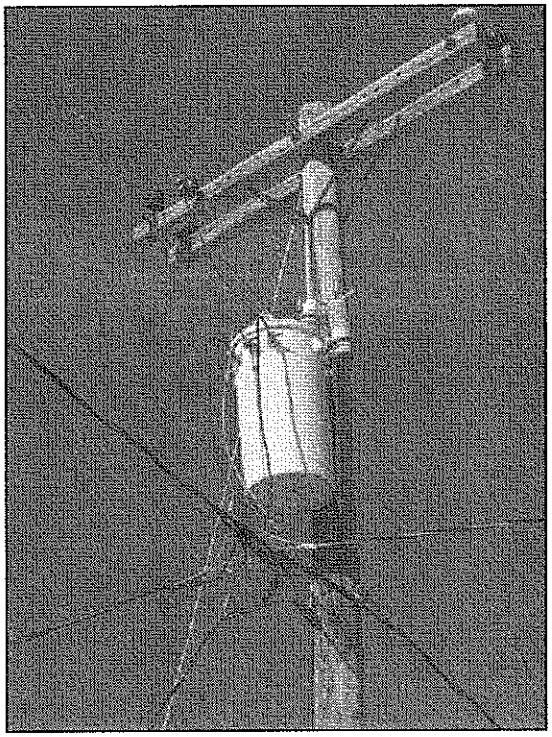

Figure 3: Pole Mounted Single-Phase Transformer (approximately 10 cubic feet in volume).

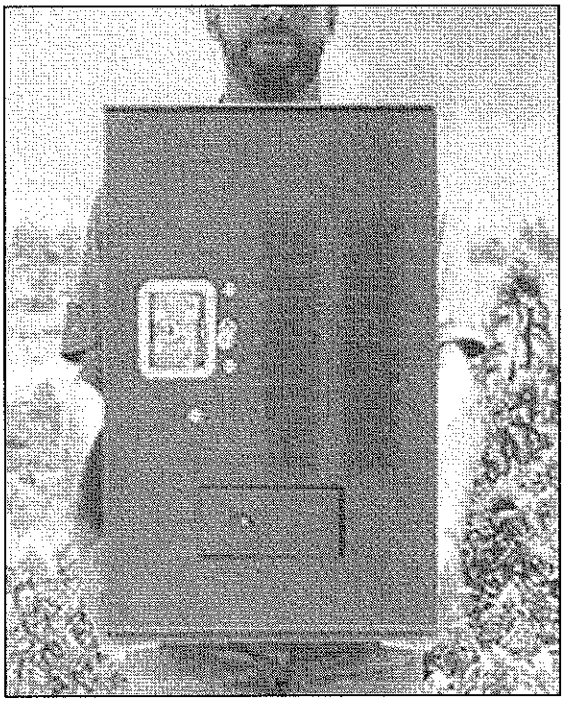

Figure 4: McCain pole-mounted "Backpack Cabinet" for traffic control (approximately four cubic feet in volume).

AT&T and ExteNet also define a small cell deployment to be no more than 50 feet above ground level or 10 feet taller than the tallest utility pole within 500 feet from the installation, *whichever is greater.*[45] An average streetlight, traffic signal or utility pole in a typical neighborhood stands approximately 35 feet above ground level, which would mean that ExteNet's facilities would be 15 feet taller than virtually all other neighboring structures. This seems absurd when ExteNet's facilities would be only 10 feet taller than all other neighboring structures in areas where the average pole height exceeds 50 feet.

Small cells in the public rights-of-way are closer to the general public's view with fewer opportunities for concealment. Local Governments does not necessarily oppose voluntary streamlined practices for truly small cells, but the facilities described by ExteNet and Verizon are anything but small and should not be treated differently than other new installations. Representatives from Local Governments' coalition would be willing to collaborate with the BDAC, IAC and other interested parties on reasonable, community-appropriate recommended practices and standards for streamlined small-cell deployments.

4. The Commission Should Reject Industry Proposals to Reinterpret "Collocations" to Include New Installations on Non-Tower Structures without Any Previously Approved Wireless Facilities

Several industry commenters asked the Commission to re-interpret "collocation" to include new facilities on structures not previously approved as a wireless support structure and support structure replacements.[46] The proposed definition conflicts with the ordinary definition for

[45] *See* AT&T Comments at 22–23; ExteNet Comments at 2.

[46] *See, e.g.*, Lightower Comments at 12; *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, *Comments of Crown Castle Int'l Corp.*, at 15 (June 15, 2017) [hereinafter "Crown Castle Wireline Comments"].

"collocation," which refers to multiple wireless facilities in a shared space.[47] Installations on non-tower structures without any previously approved wireless facilities are not "collocations" in the commonly understood sense.

Collocation as a regulatory concept first appeared in the Telecommunications Act as a mandate to allow competitive local exchange carriers into the incumbent carriers' facilities.[48] Later, the *2009 Declaratory Ruling* utilized the term to distinguish "collocation applications" for additions to previously approved sites from applications for "new facilities or major modifications" and all other facilities.[49] Indeed, the state statutes the Commission cited as support in the *2009 Declaratory Ruling*—and even some the Commission omitted—define "collocation" as multiple wireless facilities in a shared location.[50] Although the Commission's interpretation in the *2014 Infrastructure Order* deviated from the traditional definition because it no longer contemplated multiple equipment owners but rather additional equipment without respect to ownership, it nevertheless confirmed an "existing wireless tower or base station" as a fundamental prerequisite for a collocation.[51]

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[47] *See* 47 U.S.C. § 251(c)(6); *2009 Declaratory Ruling*, *supra* note 22, at ¶ 43 (distinguishing between collocation applications and applications for "new facilities or major modifications"); *2014 Infrastructure Order*, *supra* note 34, at ¶ 178 (defining "collocation" as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes"); *see also* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 315 (27 ed. 2013) (defining "collocation" as "the sharing of an antenna tower by two or more wireless operators").

[48] *See* 47 U.S.C. § 251(c)(6).

[49] *See 2009 Declaratory Ruling*, *supra* note 22, at ¶ 43.

[50] *See id.* at ¶ 47–48 (citing CAL. GOV'T CODE § 65850.6(d)(1) ("'Collocation facility' means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility."); FLA. STAT. ANN. § 365.172(3)(f) ("'Collocation' means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae."); KY. REV. STAT. § 100.985(3) ("'Co-location' means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower."); N.C. GEN. STAT. ANN. § 160A-400.51(4) ("The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks."); *see also* IND. CODE. ANN. § 8-1-32.3-4 ("As used in this chapter, 'collocation' means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.").

[51] *See* 47 C.F.R. § 1.40001(b)(2) ("The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.").

The proposed reinterpretation would unreasonably extend the definition to cover applications for new installations on structures without any previously approved wireless facilities.[52] Even when the Commission has classified installations on towers without existing antennas to be a collocation, the tower itself received a prior approval as a structure solely intended to support FCC-licensed or authorized equipment.[53] Accordingly, the Commission should reject the proposal to reinterpret the phrase collocation to include new installations on support structures without any previously approved wireless facilities.

C. The Commission Should Reject Proposals to Effectively Shorten the Shot Clock by Including Pre-Submittal Conferences and Post-Approval Health and Safety Reviews in the Timeframe for Review

Several industry commenters asked the Commission to declare that the shot clock timeframes encompass the entire local review process—which includes both pre-submittal conferences and ministerial review for compliance with health and safety codes.[54] As discussed in Local Governments' principal comments, the "reasonable" timeframe for a decision commences when the State or local government receives a "duly filed" application and terminates when the reviewing authority "acts" on the request.[55] Accordingly, conduct that occurs before a duly filed application is received (such as pre-submittal conferences) or after the reviewing authority acts (such as ministerial health and safety review) falls outside the shot clock's scope.

An "eligible support structure" means a tower (a structure built solely or primarily to support FCC-licensed or authorized equipment) or a base station (a non-tower structure locally approved as a support for FCC-licensed or authorized equipment). *See id.* §§ 1.40001(b)(1), (4) and (9).

[52] *See* Lightower Comments at 11-12; Crown Castle Wireline Comments at 15; Verizon Comments at 41.

[53] *See 2014 Infrastructure Order*, *supra* note 34, at ¶ 174.

[54] *See, e.g.*, CTIA Comments at 8, 15.

[55] *See* Local Gov'ts Comments at 8.

1. Crown Castle Falsely Maligns California Cities as Obstructionists for Requiring Health and Safety Permits Prior to Deployment

Crown Castle alleges that California cities such as Cupertino, Hillsborough, Monterey, Rancho Palos Verdes, Pacific Grove, San Luis Obispo and Santa Cruz delay or completely obstruct deployments by "tak[ing] the position that the shot clock does not apply to collateral permits, such as encroachment permits . . . ."[56] However, Crown Castle offers no real evidence that shows local governments are obstructing deployments during the health and safety review phase.

The cities that were able to respond by the time of this filing strenuously object to Crown Castle's characterization that local governments manipulate the shot clock rules to delay and obstruct infrastructure deployment. Cities are merely attempting to comply with shot clock deadlines and perform necessary health and safety review.

- ***City of Cupertino, California.*** Crown Castle's allegations obscure a key distinction that arises when a provider seeks to attach its facilities to city-owned infrastructure. Like any other property owner, the city requires private entities to first obtain the property rights to use city-owned poles before any permit applications can be processed. Here, Crown Castle proposed to deploy nodes on city-owned poles, but had not yet obtained the appropriate property rights to do so. To the extent that Crown Castle believes, or represents to the Commission, that the city's proprietary negotiations over access to city poles is a regulatory function governed under the federal shot clocks, this position is clearly mistaken. The city notes, however, that as of this filing the city has agreed to grant Crown Castle the property rights to attach facilities to city-owned poles. Accordingly, the city engineer is now able to process Crown Castle's encroachment applications for compliance with health and safety codes and does so, contrary to Crown Castle's claims, faster than any shot clock would require.[57]

- ***Town of Hillsborough, California.*** Crown Castle has an ongoing project for 16 DAS nodes and a fiber optic network in the town, but has repeatedly failed to follow established application procedures. The town is unaware of any circumstances that would lead Crown Castle to believe that delays in encroachment permit review have exceeded the shot clocks, especially considering that until June 2017 Crown Castle had not submitted a complete application for the current proposed deployment. The town's application requirements are publicly stated in the application form and were

[56] Crown Castle Wireline Comments at 15.
[57] *See* Email from Chad Mosley, City Engineer, Cupertino, Cal., to David Brandt, City Manager, Cupertino, Cal. (July 11, 2017, 7:52:06 AM).

referenced in timely incomplete notices. Any delays in the application process have been attributable to deficiencies in Crown Castle's applications, not the town's alleged manipulation of the shot clocks.[58]

- ***City of Monterey, California.*** The city does not delay or obstruct the processing of encroachment permits and believes that Crown Castle misrepresents the city's permitting process and practices. Crown Castle has submitted only one small cell application to the city—a proposal to install antennas on a replacement utility pole that did not support any existing wireless equipment—which the city approved in less than 150 days. After receiving applications for the required encroachment permits, the city issued each permit in seven days. Given that the city issued its discretionary siting approval within the applicable shot clock and performed its public health and safety review in one week, there is no basis to conclude that the city manipulates the shot clock rules to delay and obstruct small cell deployments.[59]

- ***City of Pacific Grove, California.*** Contrary to Crown Castle's claims, the city adheres to the applicable shot clocks. The city indicated that it had processed only one application from Crown Castle and that it was approved within the required shot clock. To the extent that Crown Castle perceived any delay, the city contends that it was caused by Crown Castle's own decision to change the site location and design when Crown Castled learned that the project would require a separate approval from the California Coastal Commission. These material alterations to the scope of the project required the city to review Crown Castle's new proposal as an entirely new project. Any delays in the permitting process were therefore solely attributable to Crown Castle and not the city.[60]

- ***City of Rancho Palos Verdes, California.*** Crown Castle's allegation that the city delays issuing collateral permits is unfounded. The city is currently processing a number of Crown Castle's applications for right-of-way facilities that are still in the discretionary review phase and have not yet been submitted for collateral permits. The city further disputes that it must apply the 90-day shot clock to "collocations of small cell equipment in the right-of-way."[61] In this context, Crown Castle interprets "collocations" to mean the addition of equipment to structures that *do not* currently support wireless equipment. The legal authority for this position is tenuous at best and the city elects not to take a position that the Commission itself has not endorsed outside of a limited programmatic agreement for historic preservation purposes.[62]

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[58] *See* Memorandum from Dr. Jonathan Kramer, Telecom Law Firm PC, to Paul Willis, Public Works Director, Town of Hillsborough, Cal. (Jan. 27, 2017) (identifying that Crown Castle's applications contained materially inconsistent statements, omitted contractor information and failed to adequately respond to certain questions on the application).

[59] Email from Todd Bennett, Senior Associate Planner, City of Monterey, Cal., to Michael Johnston, Telecom Law Firm PC (July 14, 2017, 3:39 PM).

[60] *See* Email from Heidi A. Quinn, Assistant City Attorney, Pacific Grove, Cal., to Michael Johnston, Telecom Law Firm PC (July 14, 2017, 5:33 PM).

[61] Crown Castle Wireline Comments at 15.

[62] *See 2009 Declaratory Ruling* at ¶ 46 (citing 47 C.FR. Part 1, App. B—Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Definitions, Subsection C).

- ***City of San Luis Obispo, California.*** Contrary to Crown Castle's claims, the city adheres to the applicable shot clocks. Any delays in encroachment permitting were directly attributable to proposals submitted by Crown Castle that would have interfered with city-owned infrastructure or caused a public safety hazard. These practical deficiencies required Crown Castle to revise and resubmit the appropriate plans and specifications to ensure compliance with generally applicable health and safety standards.[63]

- ***City of Santa Cruz, California.*** Contrary to Crown Castle's allegation, the city has not taken a position on whether the shot clocks apply to collateral permitting processes.[64] Rather, the city informed Crown Castle that facilities proposed in the public rights-of-way undergo a bifurcated permit process where the planning department reviews the project for land use purposes and the public works department reviews the project for compliance with public health and safety codes. Given that a project may require location modifications at the planning stage, public works does not perform its review until land use approval has been granted. In the city's experience, the encroachment phase occurs faster than the land use phase and the city strongly rejects Crown Castle's implication that it delays and obstructs projects by failing to grant encroachment permits in due course.

2. Proposals to Subsume Ministerial Construction and Encroachment Approvals into the Shot Clock Subjects Critical Health and Safety Review to Unreasonable Time Pressure

Proposals from industry commenters to simultaneously truncate the presumptively reasonable timeframes and expand the shot clock to cover the entire review process would therefore mean that building and safety officials would have potentially only a few days to evaluate whether a proposed deployment endangers the public.

Such a rule would not serve the public interest because it would subject building and public works officials to unreasonable time pressure as they conduct essential health and safety reviews.

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[63] *See* Email from Jon Ansolabehere, Assistant City Attorney, City of San Luis Obispo, Cal., to Michael Johnston, Telecom Law Firm PC (July 12, 2017; 12:38) (stating that "initial plan submittals lacked information regarding pole structural, conductor and conduit location and capacity, and existing equipment on poles. Subsequent submittals showed radios that would have prevented breakaway hardware from functioning, radios in locations that were already occupied by other equipment, coring and chipping signal foundations in a manner that would likely comprise structure integrity, and drawing power from unmetered flat rate City facilities which is a violation of the City's service agreement with PG&E.").

[64] *See* Email from Heather J. Lenhardt, City Attorney, City of Santa Cruz, Cal., to Michael Johnston, Telecom Law Firm PC (July 10, 2017; 1:13 PM).

A deemed-granted remedy—especially if coupled with AT&T's and CCA's perilous proposal to authorize construction without health and safety approval—would further exacerbate this unnecessary time pressure. Comments from State and local agencies charged with health and safety responsibilities echo this point.[65]

Moreover, the ministerial review process for building and/or encroachment permits does not allow health and safety officials to contribute to the allegedly unreasonable delays or exactions that the industry generally points to as the impetus for new limitations. Deployments either meet the code requirements or not, and these objective requirements are applicable to all similarly situated entities.

There is simply no valid reason to burden health and safety officials with the shot clock. Accordingly, the Commission should reject industry proposals to expand the deadlines to include ministerial health and safety reviews.

D. Shot Clock Timeframes Cannot be Applied to Proprietary Functions or Decisions, and Any Regulations on Proprietary Negotiations Must Reflect Realities of Municipal Contracting

As in *In re Mobilitie Petition*, industry commenters generally urged the Commission to ignore the well-established distinction between regulatory and proprietary functions and find that all local government conduct in connection with wireless facilities falls within the shot clock. For example, Mobilitie asks the Commission to find the applicable shot clock timeframe begins to run

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[65] *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Alaska Dept. of Trans. and Pub. Facilities*, at 3 (June 15, 2017); Cal. PUC Comments at 12–17; *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of City of Chicago*, at 4–6 (June 15, 2017); *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Georgia Dept. of Trans.*, at 1–3 (June 15, 2017); *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Illinois Dept. of Trans.*, at 2 (June 8, 2017); *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Comments of Utah Dept. of Trans.*, at 4–5 (June 15, 2017).

at the time that the applicant requests a license or franchise to install facilities in the public rights-of-way.[66] The Commission should reject this and other similar requests.

CTIA attempts to justify this rule on the basis the § 332(c)(7)(B)(ii) applies to "requests for authorization to place, construct or modify personal wireless service facilities," but fails to explain how this limitation on state and local *regulatory* authority limits state and local *proprietary* authority.[67] In addition, CTIA criticizes municipal commenters' reliance on case law and attempts to argue that the Communications Act does not recognize the distinction between regulatory and proprietary functions.[68] Put simply, CTIA has the law exactly backwards. The distinction between regulatory and proprietary functions, and the notion that federal preemption does not reach the latter, are embedded in our legal system such that Congress is presumed to know these doctrines when they enact new laws. Congress does not need to explicitly limit the Communications Act to regulatory functions—it already is because Congress did not say otherwise.

The Commission should not find that proprietary negotiations for property rights to use municipal assets fall within the reasonable-time limitation under § 332(c)(7)(B)(ii). However, to the extent that the Commission does attempt to impose time limitations on non-regulatory activity, the Commission should recognize that this separate process requires a separate shot clock, and should not subsume pre-application activities into the same timeframe set aside for application review.

Agreements between municipalities and private parties typically require approval by an elected or appointed body, much the same as any other corporation. Even if agreements could be reached within a relatively short timeframe, additional time will be necessary to calendar the item

[66] *See* Mobilitie Comments at 6.
[67] *See* CTIA Comments at 15.
[68] *See id.* at 14.

for the next available meeting date. Any rules should reflect these basic realities about municipal business.

F. Moratoria

The California Association of Competitive Telecommunications Companies ("CALTEL") on behalf of Sonic Telecom alleges that the City of Berkeley, California, imposes local moratoria on most streets desired for wireline deployment.[69] In addition, CALTEL objects to Berkeley's street-cut notice procedures that require posting on each building within 500 feet and furnishing proof to the city.[70] These comments concern "street cut" moratoria that warrant some additional explanation.

First, the moratoria on street cuts does not violate § 253(a) because it falls within the safe harbor for right-of-way management. The city's streets are subject to a limited five-year moratoria after a street has been rehabilitated.[71] Such moratoria are applied on a nondiscriminatory and competitively neutral basis and only restricts wireline deployments to the extent that they require a street cut on a street under moratorium. In some cases, providers could simply install overhead facilities as a feasible substitute.[72]

With respect to CALTEL's objection to standard noticing procedures, the city is fairly dense and values providing residents notice of street work that may cause noise or some other unexpected disturbance. The city has made a reasonable decision to ensure that potentially impacted residents and property owners are notified, and that a system exists to ensure compliance

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[69] *See In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure* Investment, WC Docket No. 17-84, *Comments of CALTEL*, at 18 (June 15, 2017).
[70] *See id.*
[71] *See* Berkeley Public Works Dept., *Streets on Moratorium* (last visited July 17, 2017), http://www.ci.berkeley.ca.us/Public_Works/Sidewalks-Streets-Utility/Streets_on_Moratorium.aspx.
[72] *See* Berkeley Public Works Dept., *Aesthetic Guidelines for PROW Permits Under BMC Chapter 16.10* (Mar. 15, 2011), *available at*: http://www.ci.berkeley.ca.us/uploadedFiles/Public_Works/Level_3_-_Sidewalks,_Streets_-_Utility/Aesthetic%20Guidelines%20for%20PROW%20Permits%20Under%20BMC%20Chapter%2016_10.pdf.

with the city's noticing requirements. Ultimately, the city welcomes CALTEL's suggestion that any perceived problems with local rights-of-way management practices are collaboratively resolved between stakeholders rather than preempted by the Commission.[73]

III. THE COMMISSION SHOULD NOT INTERPRET OR RE-INTERPRET SECTIONS 332(C)(7) AND 253

A. The Commission Should Reject Verizon's Proposed "Substantial Barrier" Standard as Inconsistent with Sections 253 and 332, and Equally Ambiguous as the Existing Standards for an Effective Prohibition

Verizon asks the Commission to declare that a state or local requirement effectively prohibits telecommunications services when it "erects a 'substantial barrier' to service."[74] Furthermore, a substantial barrier would include "significant" increases in costs and "meaningful strains" on ability to provide service.[75] This proposal eviscerates the high "prohibition" standard set by the plain text in both sections 253(a) and 332(c)(7)(B)(i)(II), and also fails to shed any more light on when an "effective" prohibition occurs than the existing administrative and judicial tests.

As more fully explained in Local Governments' principal comments, sections 253(a) and 332(c)(7)(B)(i)(II) do not need to be harmonized but at the very least both require an *actual* prohibition rather than a merely hypothetical prohibition.[76] Those courts that initially considered less-than-actual prohibitions sufficient have either fully or partially abrogated those earlier positions.[77] Verizon's "substantial barrier" standard would depart from the plain text in these statutes and take the Commission backwards.

Moreover, Local Governments fails to see how this test—chock full with ambiguous words like "substantial," "significant" and "meaningful"—would provide any more concrete guidance to

[73] *See* CALTEL Comments at 18.
[74] *See* Verizon Comments at 11.
[75] *See id.* at 11.
[76] *See* Local Gov'ts Comments at 39–45.
[77] *See id.* at 39–41.

public agencies, applicants, courts or even the Commission. Rather than litigate what constitutes an "effective" prohibition, municipal and wireless industry lawyers will now have three new ambiguous phrases over which to litigate. The Commission should reject this proposed "substantial barrier" standard.

B. Amortization

As it did in *In re Mobilitie Petition*, Crown Castle alleges that some California cities intend to adopt "ordinances (virtually identical to ordinances adopted in Irvine, Santa Monica and San Diego)" that use amortization provisions to effectively prohibit new eligible facilities requests or negate the Commission's rules.[78] This assertion is incorrect because (1) municipalities may, consistent with the Commission's rules, amortize legal nonconforming structures; and (2) the draft amortization provisions expressly would not bar approval for any eligible facilities request.[79]

C. Fair and Reasonable Compensation

Industry commenters generally criticize the lease and license fees required for access to property and/or structures they do not own and mischaracterize these fees as regulatory in nature. As occurred in *In re Mobilitie Petition*, industry comments fail to name allegedly "bad actors" in an apparent effort to dodge additional scrutiny.[80]

However, Crown Castle provides an opportunity for Local Governments to respond directly to allegations that its constituents "impose onerous and discriminatory restrictions and fees that thwart" small cell deployment.[81]

- ***City of Carlsbad, California.*** Crown Castle asserts that it "has been able to negotiate a reduction to the proposed market based rents" for access to city-owned poles in Carlsbad after previously citing issues "with respect to the [city's] imposition of substantial annual

[78] *See* Crown Castle Comments at 21.
[79] *See* Local Gov'ts Mobilitie Reply Comments at 4–5.
[80] *See generally* Local Gov'ts Mobilitie Reply Comments at 1 n.2.
[81] Crown Castle Comments at 10.

attachment fees."[82] The city agrees that the original fee has been reduced, but disagrees that the fee was ever "imposed" like a regulatory fee.[83] Crown Castle's apparent satisfaction with the progress of the negotiations is emblematic of private parties staking positions and making reasonable concessions. The new fee is still market-based and wholly unrelated to the city's regulation over access to the public rights-of-way. Access to municipal property is not subject to the type of rate regulation that applies to public utilities under § 224 and to the extent that Crown Castle, or any other industry commenter, alleges unreasonable or excessive regulatory fees that violate § 253, the Commission should look critically at whether the fee is actually regulatory. The city's experience with Crown Castle evinces that industry commenters' general allegations that cities impose discriminatory regulatory fees cannot be taken at face value.

Industry commenters also protest that fees that exceed the cost to manage the public rights-of-way are "excessive and do not constitute fair and reasonable compensation."[84] The Oregon Telecommunications Association ("OTA") alleges that local governments make "no effort to relate the total fees collected to the actual costs of administering the rights of way" and adopt ordinances that are "revenue generation schemes."[85]

To the contrary, Oregon cities take a holistic and even-handed approach to ensuring that all service providers that benefit from the use of the public rights-of-way contribute to the localities that invest in, maintain and operate this public good. For a detailed survey on local franchises in Oregon cities, the Commission may refer to the League of Oregon Cities Franchise Agreement Survey Report attached to this filing as **Exhibit 1**.[86]

- ***City of Aumsville, Oregon.*** OTA named the city as one that adopted a "revenue generation" ordinance. However, the $7,000 raised by franchise fees from three telecommunications

[82] *See* Crown Castle Comments at 11.
[83] *See generally* Carlsbad Reply Comments.
[84] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WC Docket No. 17-84, WT Docket No. 17-79, *Comments of the Oregon Telecommunications Ass'n*, at 2 (June 15, 2017) [hereinafter "OTA Comments"]. The Commission should note that the comments from Oregon Telecommunications Association contain allegations for which it fails to provide adequate factual support or legal authority. Accordingly, and in light of Local Governments' responses that point out critical defects, OTA's comments should be afforded little, if any, weight.
[85] *See* OTA Comments at 3.
[86] *See* League of Oregon Cities, *Franchise Agreement Survey Report* (March 2017), *available at*: http://www.orcities.org/Portals/17/Library/Franchise%20Agreement%20Survey%20Report_FINAL%203-6-17.pdf.

providers "hardly covers" the city's administrative costs.[87] In addition, when disputes arise with telecommunications providers over franchise terms, unpermitted work or information disclosures, the city has a limited ability to recover its own legal expenses. These expenses are just one example of hidden costs of operating the rights-of-way that the industry fails to appreciate.[88]

- ***City of Beaverton, Oregon.*** The city charges a five percent gross revenue fee for utilities that generate revenue in the city and a per-foot transit fee for utilities that do not. However, the city applies these fees even-handed to all utilities, including city utilities for water, sewer and storm.[89] OTA objects to any fees that are not related to construction and inspection, but ignores additional complexities related to managing and operating the rights-of-way. Staff time and costs accrue from nearly all levels of local government, particularly from the offices of the city manager, finance, public works, planning, mayor and city attorney.[90]

- ***City of Gladstone, Oregon.*** Earlier this year, a bill proposed in the state Senate was defeated and would have limited local right-of-way fees to direct cost recovery. In a letter to the bill's sponsor, the city stated that it already runs a deficit on its right-of-way maintenance operations, and limiting right-of-way fees on a direct cost basis would further add to the city's deficit.[91] The city's alleged "revenue generation" scheme cannot even keep up with current right-of-way costs and the deficit may grow as its responsibilities increase to accommodate the entry of new users into the rights-of-way.

- ***City of Happy Valley, Oregon.*** The city adopted a new right-of-way ordinance in 2016 that "appl[ies] to all utilities (not just telecommunications providers) that own or use facilities in the rights of way to provide service in the City, including City-owned utilities and other governmental entities' utilities."[92] Contrary to OTA's claims that the city charges an annual license fee, the city's $250 license application fee is due once for the five year term of the license for the purpose of processing the license application.[93] The city's annual five percent gross revenue fee that applies to all users was established "at the same rate [prior franchisees] were paying to avoid placing them at a competitive disadvantage to new licensees."[94] Taken together, it is clear that the city imposes its right-of-way fees on a competitively neutral and nondiscriminatory basis in order to foster competition and

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[87] *See* Email from Ron Harding, City Administrator, City of Aumsville, Or., to Patty Mulvihill, General Counsel, League of Oregon Cities (July 11, 2017, 7:54 AM).
[88] *See id.*
[89] *See* Email from Dave Waffle, Assistant Director of Finance, City of Beaverton, Or., to Patty Mulvihill, General Counsel, League of Oregon Cities (July 10, 2017, 11:54 AM).
[90] *See id.*
[91] *See* Letter from Tamara Stempel, Mayor, City of Gladstone, Or., to Mark Hass, Oregon State Senator (Mar. 7, 2017).
[92] *See* Letter from Nancy L. Werner, counsel for City of Happy Valley, Or., at 1 (July 13, 2017).
[93] *See id.* at 2.
[94] *See id.*

preserve the city's ability to manage and operate the public rights-of-way as a finite resource.[95] The city's full response is attached to this filing as **Exhibit 2**.

- ***City of Milwaukie, Oregon.*** In an opposition letter to a state bill that would have preempted local rights-of-way fees, the city emphasized that Oregon is a home rule state that relies on monetizing its right-of-way assets to manage the "use and is some cases abuse of the [rights-of-way]."[96] The city's recently adopted right-of-way ordinance is not a money grab as OTA implies. Rather the ordinance was implemented "to create equity in how to charge users to occupy the space, and over time to improve the overall condition of the [rights-of-way]" and "keep[ ] costs down for all users . . . ."[97]

- ***City of Monmouth, Oregon.*** The city is currently considering a license fee system in light of the ruling in *City of Eugene v. Comcast*, but notes that contrary to OTA's claims the system would require all service providers, including municipal entities, to pay the right-of-way fees.[98] This system can hardly be considered a revenue generation scheme built on the contributions of private telecommunications companies when all users of the right-of-way would be required to pay an equitable share.

- ***City of Oregon City, Oregon.*** For fiscal years between 2012 and 2015, the city calculated revenue generated from all users of the rights-of-way and the city's total costs associated with ownership, management and maintenance of the rights-of-way.[99] The city found that its gross revenues for right-of-way use is equal to approximately three times below cost.[100] That the city runs a deficit even after enacting its new right-of-way ordinance in 2013 is a clear indication that the ordinance is not the revenue generation scheme that OTA alleges. Rather, the city determined that it needed to implement an equitable cost-sharing fee structure and replace a system that required the city to negotiate individual franchises with each right-of-way user.[101] Contrary to OTA's allegations, the city charges a nominal application fee of $50 for each five-year license term that is limited to the costs of processing the application.[102] Registration fees are not required if the user maintains a license or franchise. Like the City of Happy Valley, the city's annual five percent gross revenue fee that applies to all users was established "at the same rate [prior franchisees]

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[95] *See id.* (stating that "[c]ontrary to OTA's assertion that these ordinances are "revenue generating schemes" . . . Happy Valley found that the Ordinance would not generate new revenue from existing franchisees. Any new revenue would come from entities using the rights of way without a franchise and thus not paying the City for such use.").

[96] *See* Letter from Mark Gamba, Mayor, City of Milwaukie, Or., to Mark Hass, Chairman, Oregon Senate Committee on Finance and Revenue (Mar. 6, 2017).

[97] *See id.*

[98] *See* Email from Scott McClure, City Manager, City of Monmouth, Or., to Patty Mulvihill, General Counsel, League of Oregon Cities (July 11, 2017, 7:54 AM).

[99] *See* Declaration of Ryan Bredehoeft in Support of Defendant's Response to Plaintiff's Motion for Summary Judgment, Case No. CV 14060280, at 1-2 (Or. Cir. Ct. Feb. 26, 2015).

[100] *See* Email from Lance Powlison, Rights of Way Program Manager, City of Oregon City, Or., to Patty Mulvihill, General Counsel, League of Oregon Cities (July 10, 2017, 8:19 AM).

[101] *See* Letter from Nancy L. Werner, counsel for City of Happy Valley, Or., at 1 (July 13, 2017).

[102] *See id.*

were paying to avoid placing them at a competitive disadvantage to new licensees."[103] Taken together, it is clear that the city imposes its right-of-way fees in a competitively neutral and nondiscriminatory basis in order to foster competition and preserve the city's ability to manage and operate the public rights-of-way as a finite resource.[104] The city's full response is attached to this filing as **Exhibit 3**.

- ***City of Portland, Oregon.*** The city's public right-of-way "constitutes a finite resource that must serve many important but competing uses" that include transportation, gas and electric utilities, water and sewer, telecommunications, cable and broadband services.[105] The city assesses "similarly situated users of the rights-of-way comparable compensation" that also applies to governmental agencies.[106] Although OTA did not specifically name the city in its comments, the city engages in similar right-of-way fee structures that OTA maligns and supports with inadequate factual or legal basis. The city, like many other Oregon cities, rely on right-of-way fees "to effectively manage . . . public rights-of-way held in trust by cities for their citizens."[107]

- ***City of Warrenton, Oregon.*** Contrary to OTA's claims, the city's licensing ordinance that was adopted in 2012 "is designed to ease access to the rights of way by eliminating the sometimes time-consuming franchise negotiation process" and "eliminates any competitive advantages" that may arise under individual franchises.[108] OTA misleads the Commission into believing that the city charges registration fees, attachment fees, per-foot fees or minimum annual fees that the city does not assess. Rather, aside from the gross revenue fee, the city charges a nominal application fee in order to process a license application and has never denied a license since enacting the ordinance.[109] In addition, rather than blame Oregon municipalities for the current gross revenue fee structures, OTA need only look to its own members that have lobbied the state legislature to preserve the status quo.[110]

Ultimately, OTA paints each Oregon jurisdiction it names with a broad brush and misrepresents the nuances involved in the operation of local government and the functions it serves for the public's benefit. Like elsewhere around the United States, Oregon cities are often different

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[103] *See id.* at 2.
[104] *See id.*
[105] *See* Letter from Thomas Lannom et al., Revenue Division Director, City of Portland, Or., to Mark Hass, Chair, Senate Committee on Finance and Revenue, at 1 (Mar. 7, 2017).
[106] *See id.*
[107] *See id.*
[108] *See* Email from Nancy Werner, counsel for City of Warrenton, Or., to Patty Mulvihill, General Counsel, League of Oregon Cities (July 11, 2017, 2:19 PM).
[109] *See id.*
[110] *See id.*

in geography and population and must implement programs for the public rights-of-way that respond to uniquely local needs. Local Governments urge the Commission to recognize these real differences and allow local agencies to implement rules and fees that reflect realities of operating, managing and owning the rights-of-way.

D. Local Right-of-Way Management Practices

1. Concealment and Design Requirements

Virtually all industry commenters complain that "unreasonable" concealment and design requirements effectively prohibit wireless services.[111] However, as explained in Local Governments' principal comments, both sections 253 and 332(c)(7) preserve State and local authority to implement and enforce local zoning requirements, which include concealment and design criteria.[112]

Concealment and design criteria for facilities in the public rights-of-way are not just legally permitted, but also good common sense. As discussed *supra*, small cells are not always small and are more often than not placed on bare poles in close proximity to the general public. Aesthetic concerns are particularly salient when applicants propose to install their facilities in residential, historic or other areas where investment-backed expectations underpin requirements that future development occur in harmony with the existing environment. The photograph in Figure 5 below shows how "small cells" can be, in fact, large and obtrusive without aesthetic regulations.

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[111] *See, e.g.*, AT&T Comments at 16–17.
[112] *See* Local Gov'ts Comments at 46.

EXHIBIT G

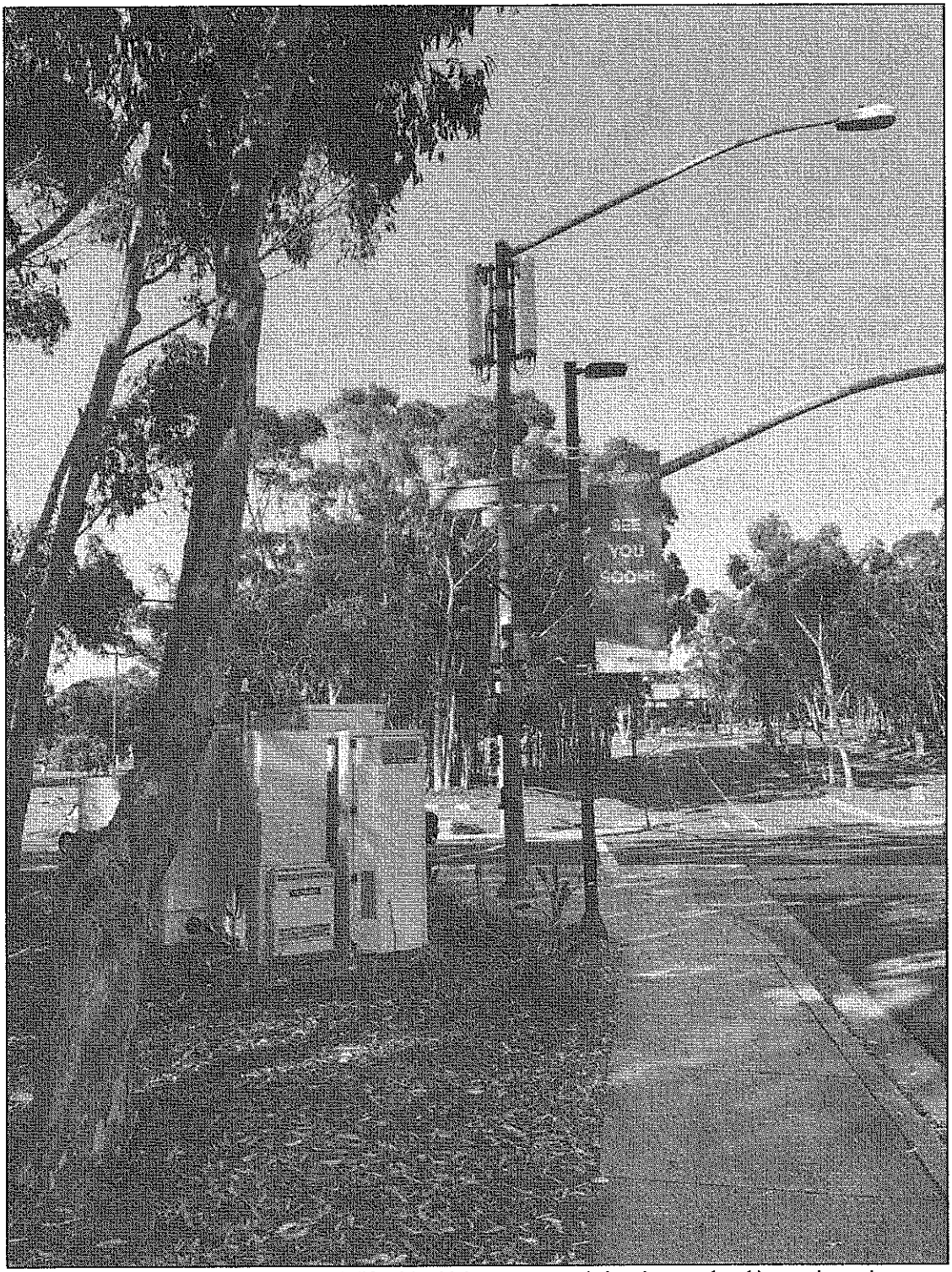

Figure 5: AT&T "small cell" (San Diego, California) with large, unconcealed equipment placed in prominent view.

EXHIBIT G

Municipalities have limited options for concealment. For example, many equipment enclosures cannot even be painted to match the pole because applicant's claim it would void the warranty on the device. Municipalities often then turn to strategies such as requiring non-antenna equipment to be installed underground in environmentally controlled vaults, within landscaped planters, street furniture or uniform equipment shrouds. The images below provide some examples to show how these approaches result in significantly better designs.

Undergrounded Equipment. As discussed above, undergrounded equipment serves both public safety and community aesthetic purposes. Technical concerns such as water intrusion can be addressed through environmentally controlled vaults, often fitted with sump pumps and other measures to protect the electronic equipment. The photos below show some thoughtfully-designed examples of small cells and DAS facilities with undergrounded equipment.

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EXHIBIT G

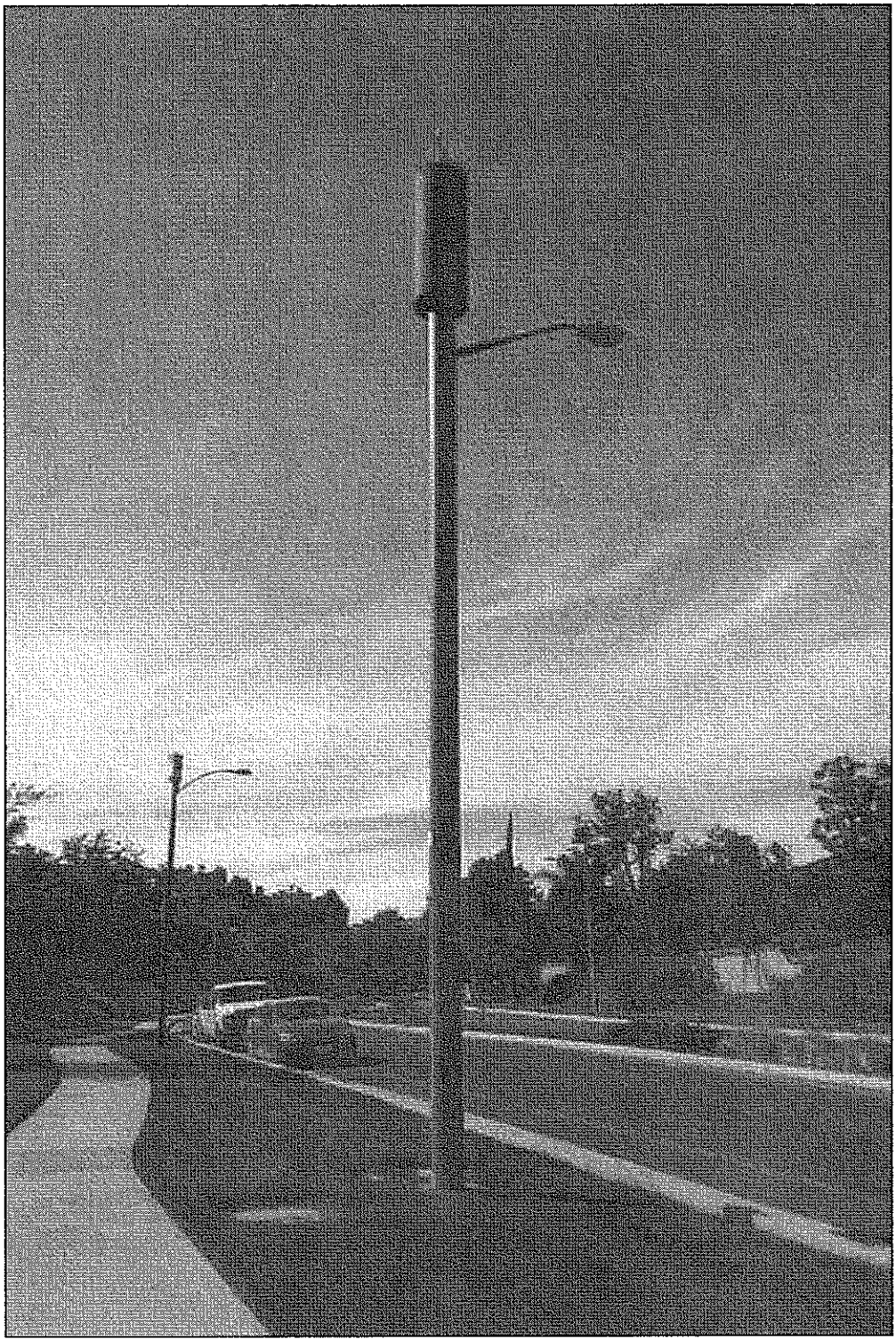


Figure 6: T-Mobile Site (Calabasas, California) with environmentally controlled equipment vault to conceal the ground-mounted equipment, and radome to conceal the pole-mounted antennas.

EXHIBIT G

Figure 7: AT&T/Crown Castle DAS installation (Ole Miss Campus, Mississippi) with undergrounded equipment in environmentally controlled vaults and antennas concealed in the luminaires. Crown Castle uses this deployment in its promotional materials. *See University of Mississippi, MS*, CROWNCASTLE.COM, http://www.crowncastle.com/projects/venues_ole-miss.aspx (last visited July 17, 2017).

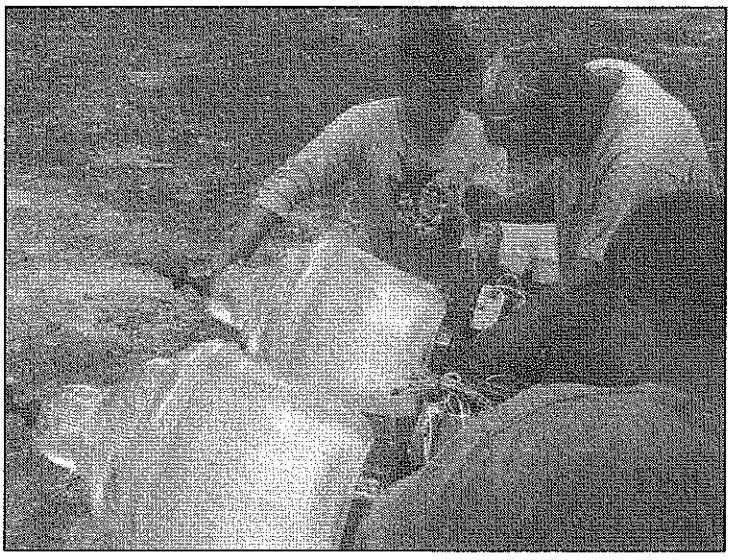


Figure 8: AT&T/Crown Castle DAS installation (Ole Miss Campus, Mississippi) Technicians install antennas concealed within luminaires.

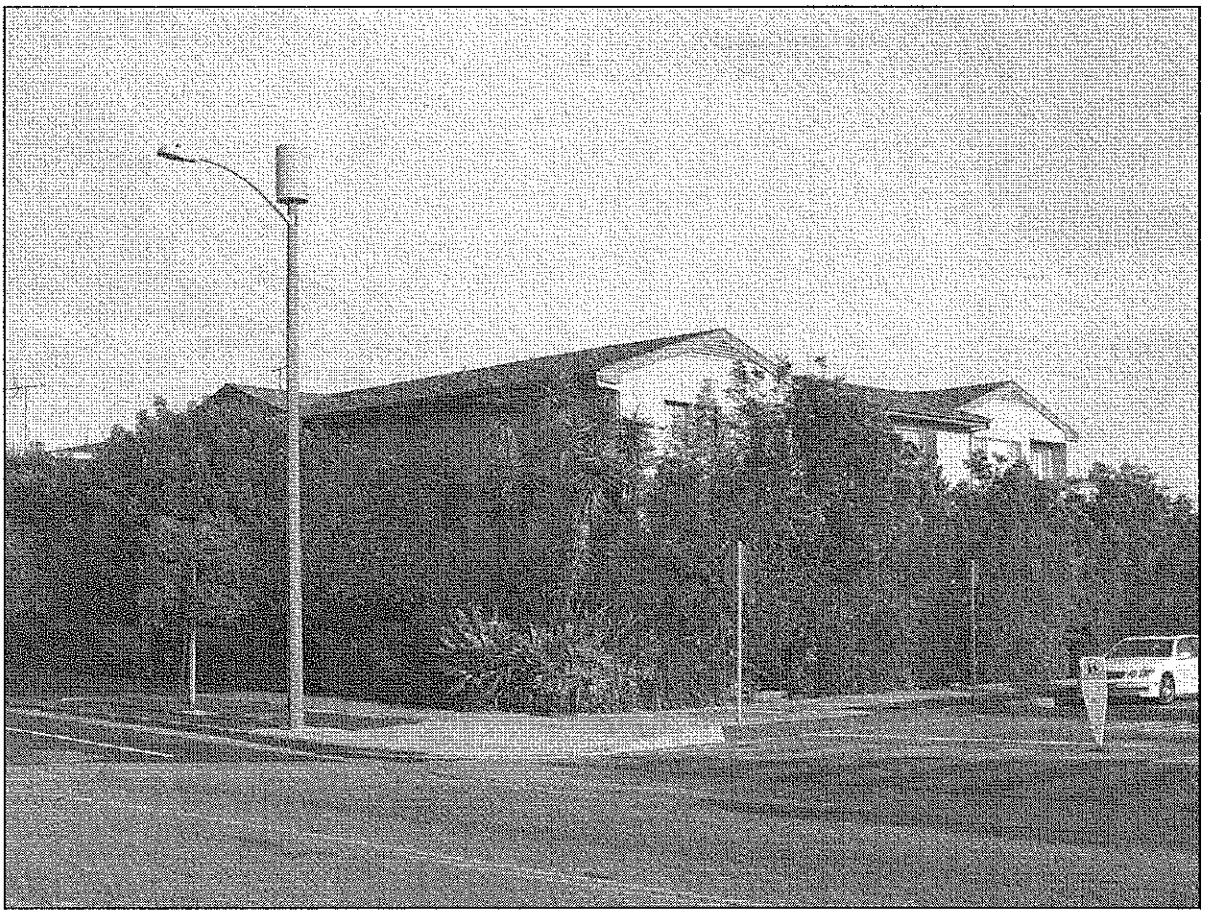


Figure 9: AT&T small cell (West Los Angeles) with equipment located in an environmentally controlled vault with hatched doors in the sidewalk just beyond the stop sign, and antennas concealed within the radome.

Concealment with Landscape Features and Street Furniture. Circumstances may arise when undergrounding is not feasible or desirable. For example, some public works departments may find that ground disturbance in congested downtown streets causes more disruption than well-placed pole-mounted equipment. In addition, some communities may find that, on balance, undergrounded equipment is not necessary where landscaping, street furniture or other existing objects can be used to conceal the equipment. Given that these decisions involve local concerns such as right-of-way safety and community aesthetics, decisions about when to use these alternatives must be left to the reasonable discretion of local officials.

EXHIBIT G

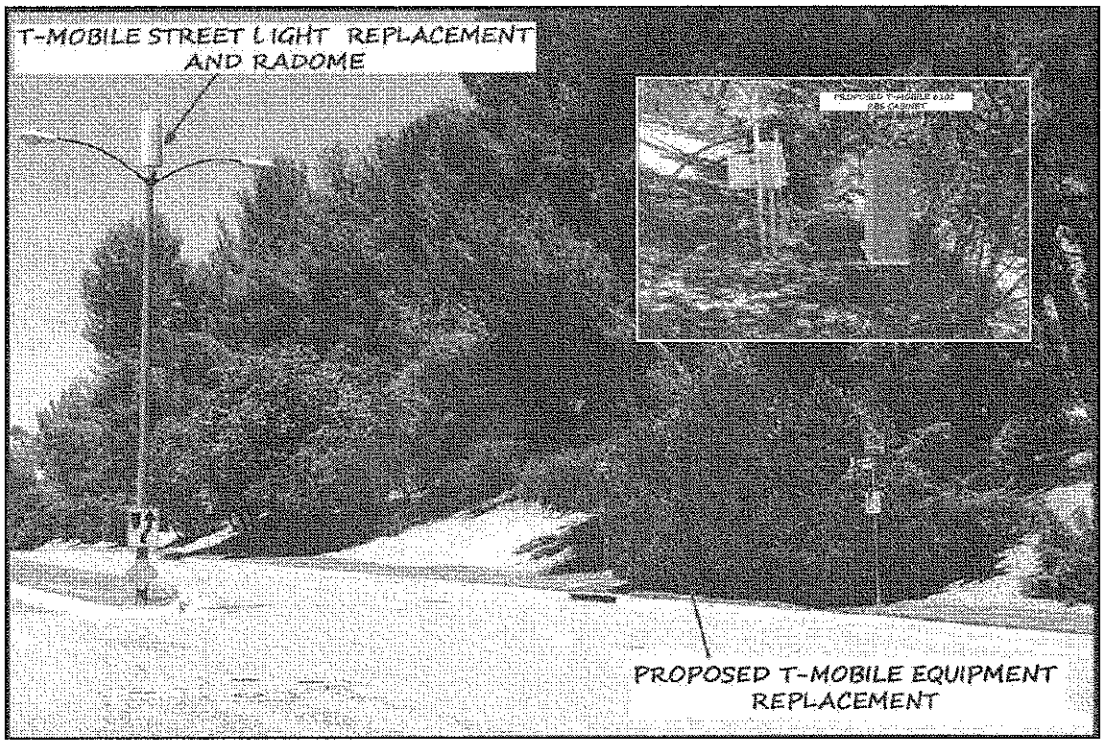


Figure 10: T-Mobile Site (Calabasas, California) with superimposed insert to show ground-mounted equipment concealed behind existing landscape features.

Figure 11: Crown Castle Site (Calabasas, California) with pole-mounted antennas on stand-off brackets and ground-mounted equipment behind the existing landscape features.

EXHIBIT G

Figure 12: Sprint Site (Calabasas, California) with ground-mounted equipment behind landscape features installed as a condition of approval. Above-ground antennas mounted on an existing streetlight pole not shown in this view.

EXHIBIT G

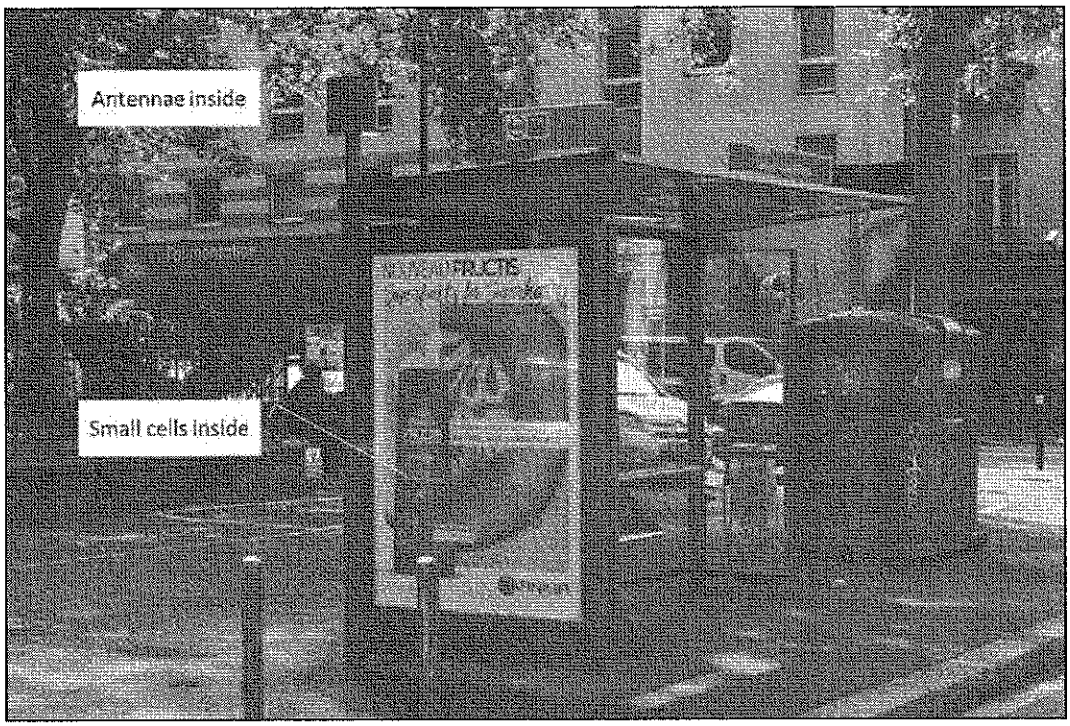


Figure 13: Finished small cell inside bus shelter. *See* David Chambers, *JCDecaux Offers Multi-Operator Urban Small Cell Solution* (June 1, 2017) https://www.thinksmallcell.com/images/articles/2017/JCD_Bus_Shelter.jpg.

Figure 14: Small cell (location unknown) being installed above a bus stop shelter.

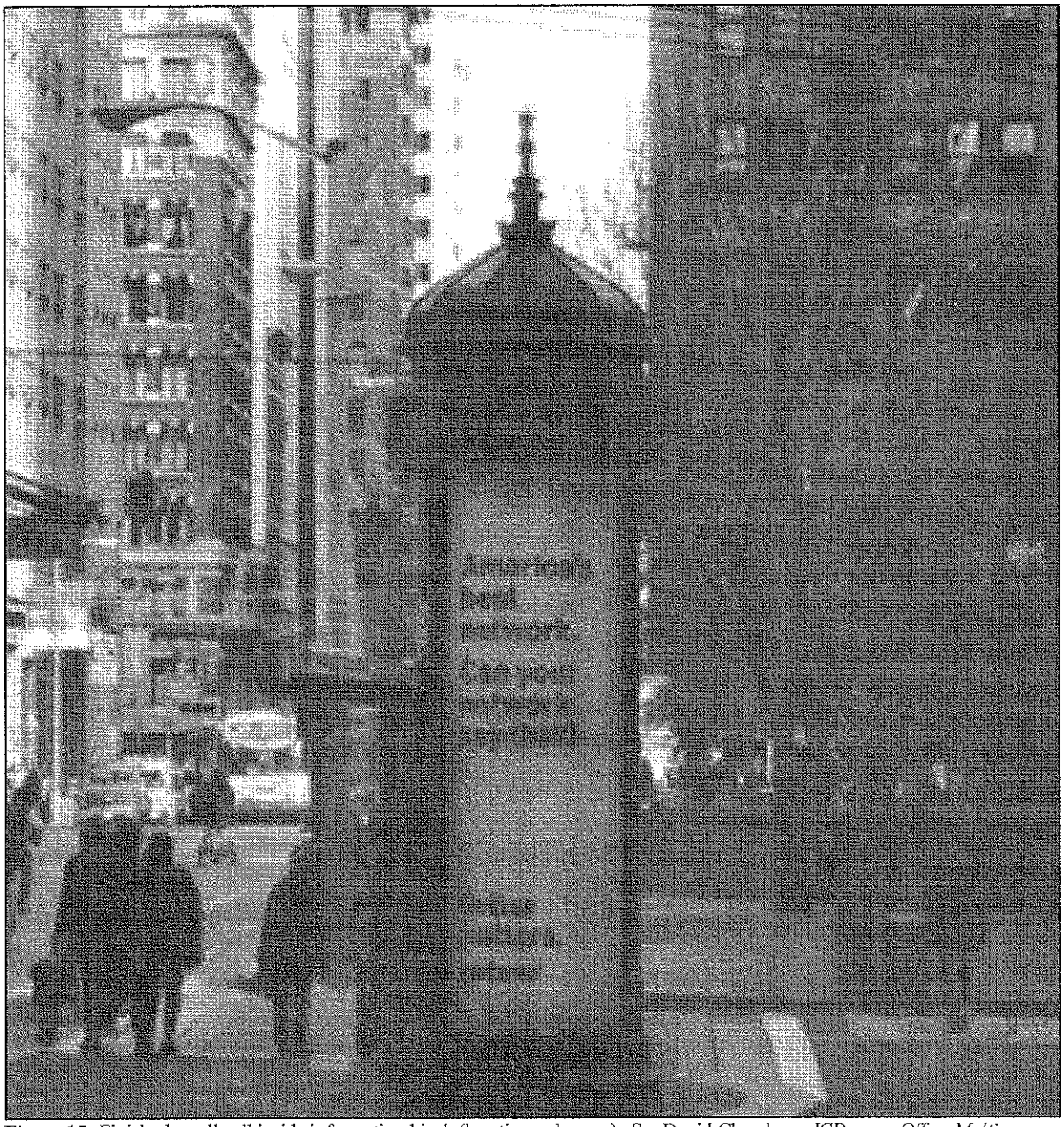


Figure 15: Finished small cell inside information kiosk (location unknown). *See* David Chambers, *JCDecaux Offers Multi-Operator Urban Small Cell Solution* (June 1, 2017) https://www.thinksmallcell.com/images/articles/2017/JCD_Bus_Shelter.jpg.

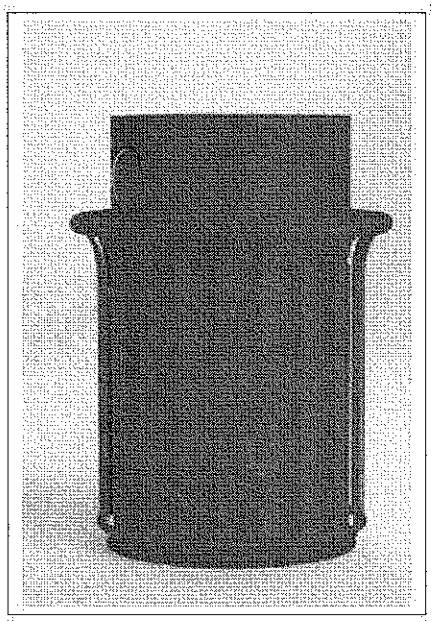
In addition to using existing street furniture, equipment manufacturers have begun to offer pre-fabricated equipment enclosures that mimic trash cans, park benches and other objects commonly found in the public rights-of-way.

EXHIBIT G

Waste Bin Radio Module SmartStack™

[150E012_000 | Ericsson SmartStack™ Radio Module]

A part of our SmartStack™ product line, the WasteBin Radio Module SmartStack™ is a sleek, modular radio and power integrated concealment solution which aesthetically blends into the most challenging environments.



Design Features:

- GR487 and NEMA compliant
- NEMA 3R rated enclosure
- Active radio cooling
- Houses up to 2X Ericsson RRUS11/12; provisions for mounting PSU A/C 02 (Ericsson PSU)
- Door fans and alarms installed for remote monitoring with available dry contact terminal block

Product Specifications:

- 28" Diameter
- 50" AGL
- Meter can and power disconnect(s) can be embedded in shroud
- Decorative frame adds protection and style
- Powder coat finish, color set by customer specifications

Figure 16: *See* Sabre Indus., *Sabre Small Cell and DAS Total Solutions Product Catalog* at 1.6 (July 2016).

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EXHIBIT G

Telecomm Bench

[180E085_000 | Concrete Telecommunications Equipment Bench]

A part of our outdoor and indoor shroud and enclosure family, the Telecomm Bench provides a source for storing small telecommunications equipment in a public space while maintaining a sleek and stealth profile. The Bench also provides public functionality any field site environment.

Design Features:

- Front and rear access door
- NEMA 3R rated
- Lockable door latches
- Integrated cable management system
- Concrete structure with internal metal structure
- Stainless steel material
- 20" x 13" door clearance
- 26" Wide metal frame

Product Specifications:

- Product Dimensions:
  - 60"W x 31"D x 35"H (28"D x 55"W at base)
  - 44" Seat Width
- 19" Rack Rails
- 6 RU rack capacity
- Fan cooling, blows from rear
- (2) 2 gang electrical box ports

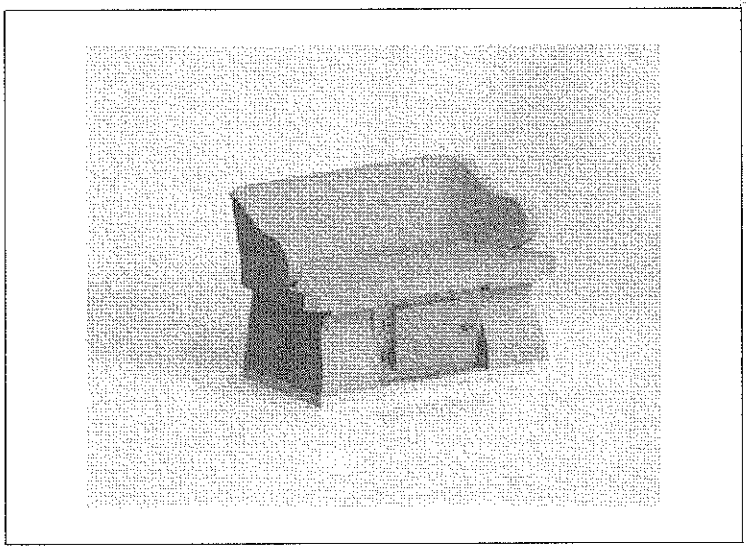

Figure 17: *See* Sabre Indus., *Sabre Small Cell and DAS Total Solutions Product Catalog* at 4.9 (July 2016)

Concealment Through Uniform Equipment Shrouds. If equipment cannot be hidden, many communities prefer that the equipment maintain a uniform appearance. This is a compromise between the service providers and the local permitting agencies: a pre-approved configuration may

be less flexible from an equipment-configuration standpoint, and may be less desirable from an aesthetic standpoint, but it that can be deployed quickly throughout a wide area.

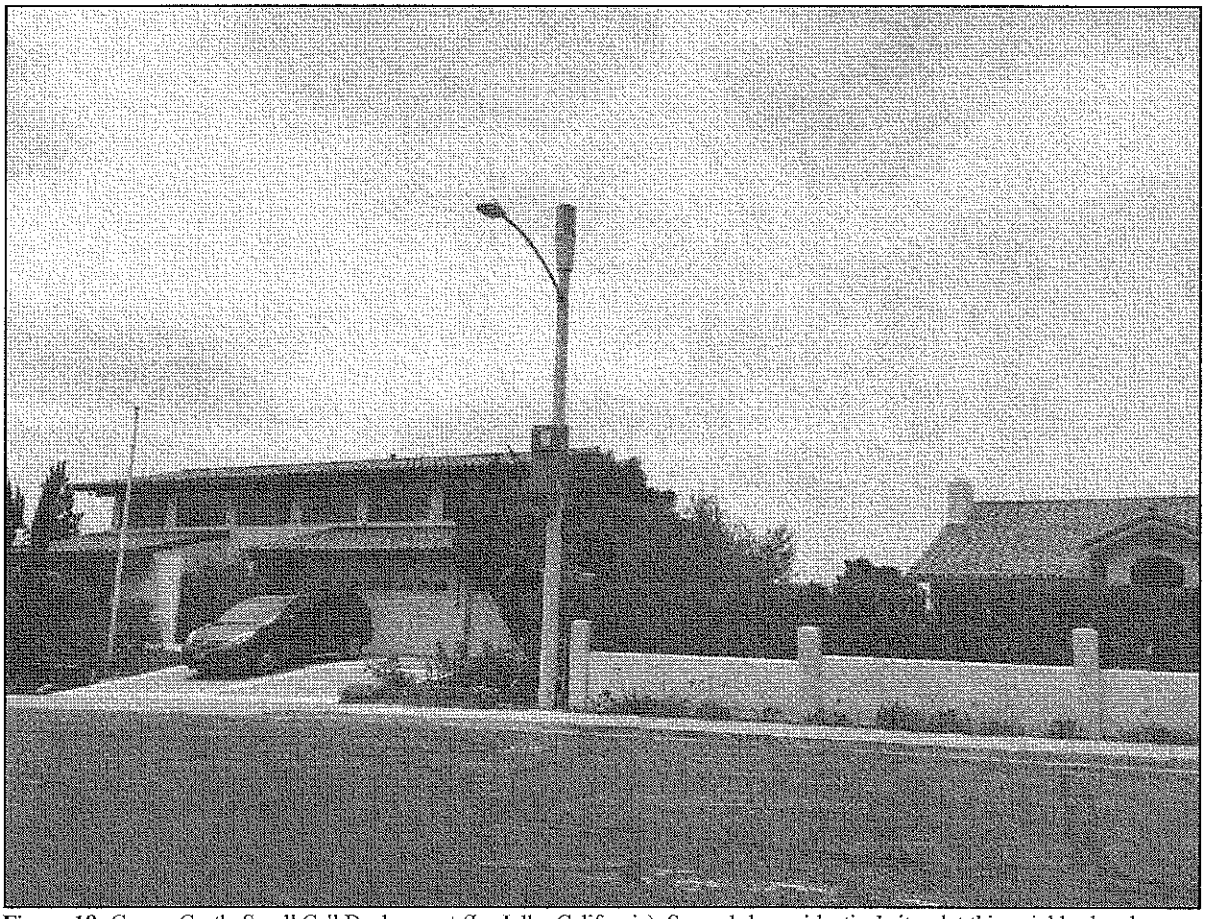

Figure 18: Crown Castle Small Cell Deployment (La Jolla, California). Several dozen identical sites dot this neighborhood.

EXHIBIT G

Figure 19: Crown Castle Small Cell Deployment (La Jolla, California). This site is related to the one shown in Figure 18, above. The equipment is housed in an identical shroud and the antennas are concealed within a radome with a shroud that covers the mounting brackets.

EXHIBIT G

Figure 20: Crown Castle Small Cell Deployment (La Jolla, California). This site is related to the one shown in Figures 18 and 19, above. The city recently invested in new roundabout intersections, light standards and landscaping for this street segment, so additional efforts were made to reduce the overall size and visual impact of the equipment.

EXHIBIT G

Figure 21: Crown Castle Small Cell Deployment (La Jolla, California). This site is related to the one shown in Figures 18, 19 and 20, above.

Although AT&T complains that form-factor restrictions unreasonably interfere with their equipment configurations, municipalities that adopt uniform equipment concealment regulations

do so in collaboration with the industry to ensure that the pre-approved designs remain technologically neutral and flexible. For example, Crown Castle praised Cincinnati's small cell regulations, which were developed over a three-day workshop with members of the wireless industry. AT&T was invited but did not participate.

The drawings in Figure 22 below show the final pre-approved designs on poles typically found in Cincinnati. These designs take into account the usual equipment various service providers would want to deploy and reasonably foreseeable expansions or upgrades. Although undergrounded equipment may still be required in historic or other design-sensitive locations, these permits for these deployments can be issued over the counter in nearly all areas of the city.

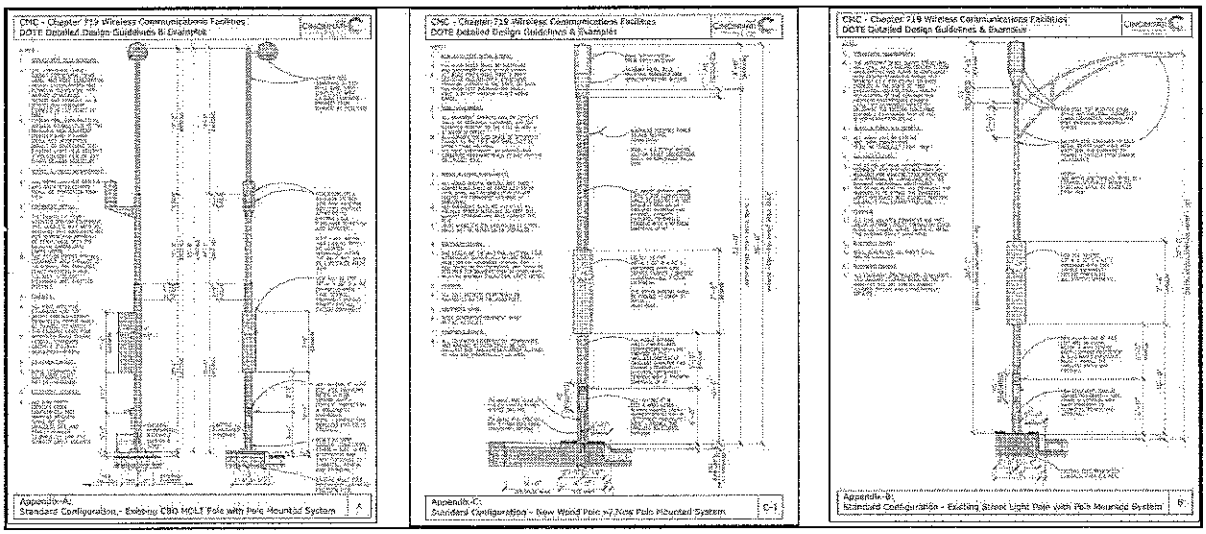

Figure 22: Standardized equipment configurations for Cincinnati small cells. These were designed in collaboration with the wireless industry with an aim to create a pre-approved design that could fit virtually any equipment by any carrier. Sites located in historic, undergrounded or redeveloped neighborhoods will still require undergrounded equipment.

2. Undergrounding Requirements for Non-Antenna Equipment are Appropriate and Permissible Right-of-Way Management Regulations

Contrary to AT&T's comments, undergrounding requirements do not prohibit wireless services because these rules are not applicable to the antennas. Most local ordinances tailored to

wireless facilities merely require that the applicant to place the non-antenna equipment underground *to the extent feasible.*[113] This hardly amounts to an effective prohibition.

AT&T also misstates the holding in *Sprint Telephony PCS, LP v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) as it pertains to undergrounding requirements.[114] Although true that the Ninth Circuit stated in *dicta* that an ordinance would effectively prohibit wireless services if it "required . . . that *all* facilities be underground," the ordinance in that case did not require antennas to be placed underground and was upheld against a facial challenge.[115]

3. Limitations on New Poles and Minimum Setbacks Serve Important Safety and Aesthetic Purposes

AT&T and Mobilitie ask the Commission to "outlaw" prohibitions on new poles and minimum separations between poles in the public rights-of-way based on the notion that such limitations unreasonably interfere with the provider's network design.[116] However, as recognized by the Federal Highway Administration, public rights-of-way are dynamic environments with multiple users for transportation, utility, social and expressive purposes.[117] Local officials must be permitted to reasonably limit new encroachments in order to balance these sometimes competitive interests, and to maintain safe and aesthetically pleasing streets and sidewalks.

Collisions with utility poles cause more than 1,000 fatalities in the United States each year.[118] The only other more deadly fixed objects in a collision are trees.[119] Although utility pole

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[113] *See, e.g.*, VISTA, CAL., DEV. CODE §§ 18.92.080(D)(1), (3); BRENTWOOD, CAL., CODE § 17.795.090(F)(2); SAN PABLO, CAL., CODE § 17.62.200(H)(4)(c); WILSONVILLE, OR., DEV. CODE § 4.803.01(G).
[114] *See* AT&T Comments at 15.
[115] *See Sprint Telephony PCS, LP v. Cnty. of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008).
[116] *See* AT&T Comments at 14–15; Mobilitie Comments at 7–8.
[117] *See* Federal Highway Admin., *Noteworthy Practices: Roadside Tree and Utility Pole Management* at 32 (Sept. 2016), *available at:* https://safety.fhwa.dot.gov/roadway_dept/countermeasures/safe_recovery/clear_zones/fhwasa16043/fhwasa16043.pdf
[118] *See* Amanda Gagne, *Evaluation of Utility Pole Placement and the Impact on Crash Rates* 9 (Apr. 23, 2008) *available at:* https://web.wpi.edu/Pubs/ETD/Available/etd-043008-155826/unrestricted/Gagne.pdf.
[119] *See* Amanda Gagne, *Evaluation of Utility Pole Placement and the Impact on Crash Rates* 9 (Apr. 23, 2008) *available at:* https://web.wpi.edu/Pubs/ETD/Available/etd-043008-155826/unrestricted/Gagne.pdf; *see also* Penn.

designs have made significant safety improvements (e.g., breakaway poles that collapse on impact), the more utility poles, ground-mounted equipment cabinets and other obstructions placed in the public rights-of-way, the more likely a collision would result in death or serious bodily harm.

One common sense method to reduce the hazards caused by additional poles is to require equipment to be placed on existing poles, and to forbid new poles unless absolutely necessary.[120] Public works departments may also require or prohibit ground-mounted equipment in certain locations so as to maintain visibility and prevent accidents. Requirements to use existing infrastructure to the extent feasible also improves community aesthetics—an independently legitimate regulatory purpose.

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Dept. of Trans., *Pennsylvania Crash Facts and Statistics* 15 (2014) *available at:* http://www.penndot.gov/TravelInPA/Safety/Documents/2014_CFB_linked.pdf.

[120] *See* Van Towle, *Highway Safety and Utility Poles*, Right of Way (Oct. 1983), *available at:* https://www.irwaonline.org/eweb/upload/web_1183_Highway_Safety.pdf

EXHIBIT G

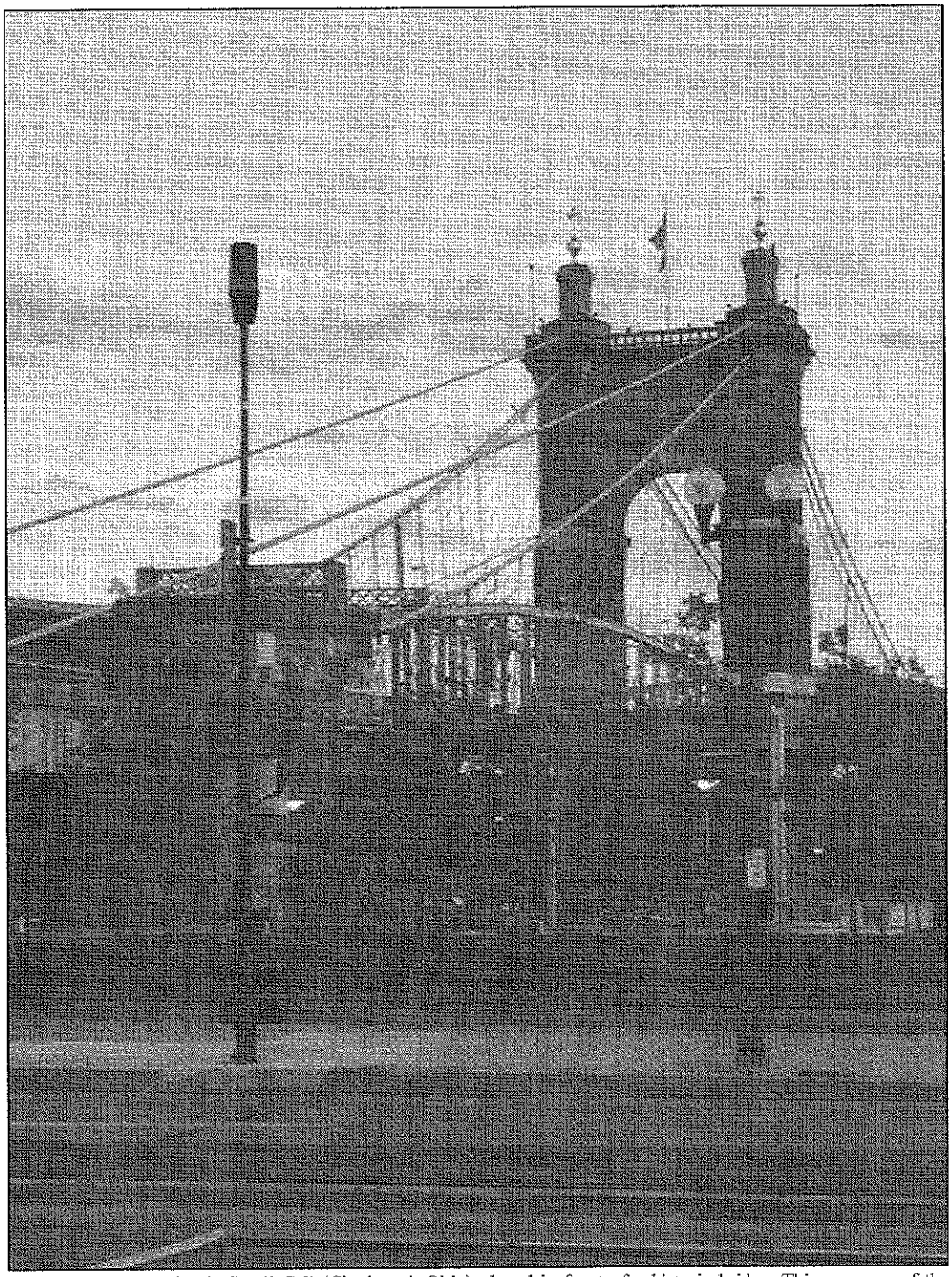

Figure 23: Crown Castle Small Cell (Cincinnati, Ohio) placed in front of a historic bridge. This was one of the unregulated sites that led to the overhaul of small cell regulations now praised by Crown Castle in their comments. Under the new regulations, this site would have been placed across the street rather than in direct sightlines of the bridge.

The fact that these reasonable, evenhanded limitations on new encroachments negatively impacts wireless deployments does not violate the Communications Act. Section 253(c) unambiguously preserves local authority to establish nondiscriminatory and competitively neutral management regulations, even if such regulations would prohibit or effectively prohibit any entity's ability to provide telecommunications services.[121] These management regulations include, as the Commission stated in *Classic Telephone*, the right to implement and enforce regulations for public safety and community zoning.[122]

[121] *See* 47 U.S.C. § 253(c);

[122] *See In the Matter of Classic Telephone, Inc.*, CCB Pol. 96-10, *Memorandum Opinion and Order*, 11 FCC Rcd. 13082, 13103, ¶ 39 (Oct. 1, 1996) (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein)) (emphasis added).

IV. CONCLUSION

The Commission should not adopt any new rules proposed or suggested in either the *Wireless NPRM/NOI* or the *Wireline NOI* proceedings. Similarly, the Commission should not issue a declaratory ruling interpreting or construing sections 332(c)(7) or 253. Any efforts to further streamline broadband deployment should be undertaken in collaboration with the Intergovernmental Advisory Committee, the Broadband Deployment Advisory Committee and State and local government stakeholders.

Respectfully submitted,

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Counsel for League of Arizona Cities and Towns; League of California Cities; and League of Oregon Cities

July 17, 2017

EXHIBIT G

EXHIBIT 1

League of Oregon Cities Franchise Agreement Survey Report

(attached behind this coversheet – 32 pages)

EXHIBIT G

LEAGUE OF OREGON CITIES

FRANCHISE AGREEMENT SURVEY REPORT

MARCH 2017

LEAGUE of Oregon CITIES

Published by the League of Oregon Cities

EXHIBIT G

LEAGUE of Oregon CITIES

Franchise Agreement Survey Report

Technical Report

March 2017

A League of Oregon Cities study of utility franchise agreements found striking new information on franchise revenue and fees. Since the early 2000s, telecom revenue has been declining as cable revenues have increased. This difference masks the aggregated trend in the revenue. Combined, city franchise revenue from these two major sources have been declining. Adjusted for inflation, this decrease is even greater.

Executive Summary

Since 2002, the League of Oregon Cities has periodically surveyed its membership in order to update data pertaining to the types, bases and rates that they charge franchisees operating in the public rights of way owned by cities. This data helps cities understand how other cities manage their rights of way and receive compensation for them, and is crucial to the understanding of revenue sources available to cities.

The 2015 survey was conducted between October and November 2015. Responses were received from 91 cities, representing 66 percent of the Oregon population residing in a city.

Key Findings

The 2015 survey is very revealing about the second largest revenue collected by most cities. The key findings include the following:

- Revenues derived from telecommunications franchise fees have been declining since 2002.
- Cable franchise fee revenues, on the other hand, have increased significantly since 2000.
- In the aggregate, both telecommunications and cable franchise fee revenues have remained relatively flat when adjusted for inflation. When also adjusted on a per capita basis, the data shows a decline among respondent cities.
- While only a few cities pay franchise fees to other governments, fully one-third of them charge themselves franchise fees (typically for water, wastewater or stormwater services).

Background

Franchise fees (also sometimes referred to as privilege taxes) are a legal agreement between a city and another entity involving compensation for the entity's use of the city's right of way. These agreements can include a contract negotiated individually by a city and its utility providers, or an ordinance approved by a city council. In either case, the agreement usually outlines the rate charged, the terms and conditions, and any special services provided by either party.

These agreements ensure that companies using a right of way are paying fees to reimburse a local government for the use of public property. They also prevent general taxpayers from subsidizing extraordinary use. Franchise fees are typically calculated as a percentage of the sales revenues of a utility company to customers in a given service area or territory. In light of Oregon's restrictive property tax system, diminution of franchise fees would have a very detrimental effect on city fiscal capacity.

Survey Results

Telecommunications franchise agreements are most often established by ordinance (72 percent), but are also created by a contract with the service provider (20 percent). The remaining 8 percent includes agreements that result from a city council resolution or situations in which the franchisee operates without an agreement. The franchise fee is usually, although not universally, charged in lieu of a general business license fee or tax. Agreements which include a contract have an average duration of 11 years.

By state statute, the basis for franchise fees charged to a traditional incumbent local exchange carrier (ILEC) is gross revenues derived from dial tone (basic telephone connection) services provided to customers within a city's jurisdiction. It does not account for the myriad of other revenue-producing services currently provided by ILECs. On the other hand, there is no restriction on the basis for franchise fees charged to competitive local exchange carriers (CLEC), the independent, often smaller and geographically specific telecommunications companies that have sprung up since deregulation of the industry in 1996.

Similar to telecommunications agreements, 67 percent of cities responding to the survey enter into agreements with cable franchises by ordinance; 21 percent do so by contract. The median length of cable agreements is slightly more than 10 years.

In addition, cities can grant right-of-way access to other governments and charge them franchise fees for doing so. Cities also charge themselves franchise fees to facilitate proper accounting for a city business activity. This is most commonly practiced by larger cities and most often occurs in the Portland metropolitan area. The most common franchise fees local governments charge themselves are for water, wastewater and stormwater services.

As the report demonstrates, while franchise agreements with telecommunications providers represent a significant source of such revenue to cities, these other services provide franchise revenue as well:

- Electricity
- Natural gas
- Solid waste disposal
- Water
- Wastewater

Conclusion

Because Oregon is a home rule state, cities can govern themselves in areas not specifically preempted by state or federal law. With right-of-way management and franchise fees, cities have local control of their individual relationships with utility service providers. This is a principle which the League of Oregon Cities will continue to protect.

Any preemption of a city's right to enter into franchise agreements (via ordinance or contract) with its service providers will be resisted. Similarly, attempts to create a universal methodology for the administration of franchises and the collection of fees will also be opposed, as they fail to take local circumstances into consideration.

Rights of way in the public domain are government's responsibility to manage and maintain, and cities take this responsibility very seriously. The fees charged for the occupancy of such a right of way are critical to the financial health of cities and should be viewed as a normal cost of doing business by an entity reliant on that access.

As policy discussions unfold, either in the Legislature or in agency rulemaking, these basic tenets will govern the League's response.

Introduction

A revenue-expenditure imbalance for cities has resulted from the combination of Oregon's restrictive property tax system and an increase in expenses beyond city control. The importance of property tax revenues to cities cannot be overstated. They are the single highest and most flexible revenue source for funding core city services such as public safety and street projects.

In a recent League of Oregon Cities survey[1], costs associated with employees (wages, healthcare and retirement) were identified by cities as the three highest cost drivers. Controlling the top three expenses is beyond a city's ability—as they are controlled by market factors and state and federal regulations. To maintain services to their communities, cities are looking to revenue sources other than property taxes. In a 2014 League survey[2], 54 percent of respondents cited franchise fees as either the second or third highest revenue source.

Since 2002, the League surveys its members every few years to collect and analyze data on the status of franchise agreements throughout the state, with the last survey conducted in 2011. The survey asks cities to provide their most recent rates and rate calculations for telecommunication and cable franchises. Questions are also posed for other franchises, such as electricity, water, garbage, and franchises to other governments. This information is crucial to understanding revenue sources in Oregon cities and to forecasting future revenue trends.

Methods

This survey was conducted from October 30 to November 30, 2015 and received responses from 91 cities. These cities represent 1,801,900 residents, or 66 percent of the population residing in a city in Oregon. The League created the survey using software from Qualtrics and distributed it to city managers, city recorders, and other individuals with positions equal to a city's chief executive officer. These individuals often relied on support from relevant city staff or forwarded the survey to be completed by that individual.

[1] League of Oregon Cities 2015 State of the Cities Report

[2] League of Oregon Cities 2014 State of the Cities Report

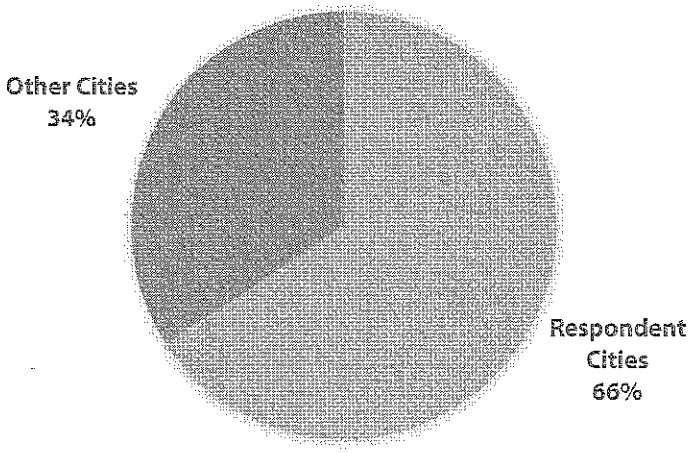

Figure 1: Respondent Population Proportionate to Oregon Urban Population

For data analysis, cities are divided into population quintiles, or groups of cities representing roughly one-fifth of the 241 total cities. This allows for a more accurate comparison among similar sized cities. If LOC randomly selected cities from each quintile, we would expect 20 percent to come from each of the five quintiles. Among these respondent cities, there was overrepresentation in cities more than 10,000 population and underrepresentation in cities between 1,251 and 3,100 population. Further, with the exception of the Valley and Eastern Oregon, all other small city regions as defined by the League were represented proportionately.

Category	Population Range	# Cities	% Cities	Diff. from OR Population
1st Quintile	<450	18	20%	0%
2nd Quintile	451-1,250	18	20%	0%
3rd Quintile	1,251-3,100	10	11%	-9%
4th Quintile	3,101-10,000	17	19%	-1%
5th Quintile	>10,000	27	30%	10%
Region		**# Cities**	**% Cities**	**Diff. from OR Population**
N. Coast		6	7%	-1%
Metro		22	24%	0%
Valley		21	23%	6%
S. Coast		4	4%	-1%
S. Valley		10	11%	-2%
Central Oregon		12	13%	2%
NE Oregon		10	11%	-1%
E. Oregon		5	6%	-4%
TOTAL		**91**	**37%**	

Table 1: Respondent Characteristics by Population and Region

Survey Results

Telecommunication Franchises

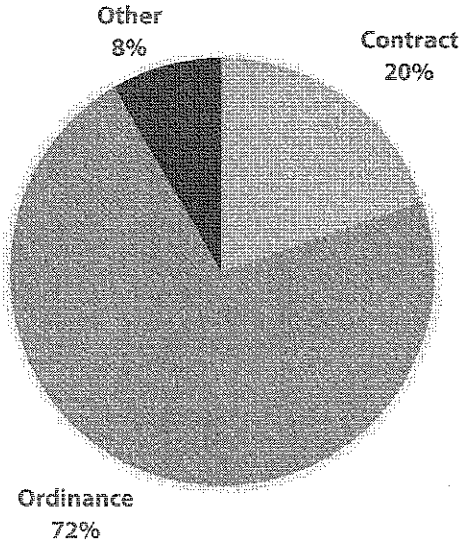

Figure 2: Telecommunications Franchise Establishment Method

Telecommunications franchise agreements are one of the largest sources of revenue generated in a city's right of way. According to the survey, 72 percent of responding cities indicated their telecommunications agreements are established by ordinance. Twenty percent establish theirs by contract, while the remaining 8 percent reported using other means, most commonly through city council resolution. While agreement duration ranged from three years to "open ended," the average duration was 11.1 years, indicating that most telecommunications agreements are established for the long term.

Cities address the unique position of providers that operate in the right of way differently. Seventy-nine percent of cities do not require telecommunications providers to pay a general business license fee or tax. This occurs more often in the Metro region and less likely to occur in the Valley region. This added cost in those cities that require telecommunications franchises to pay additional fees or taxes is typically less than $100 per year. This fee is often charged based on the number of telecommunication company employees within city limits. Cities also may charge permit fees for a company to operate in the municipal right of way. Seventeen percent of cities charged this fee, 94 percent of which were in cities with populations greater than 3,100. This was also more likely to occur in the Metro region. Among the 17 percent of cities that have a permit fee, 41 percent of these waive the fee for telecommunications providers.

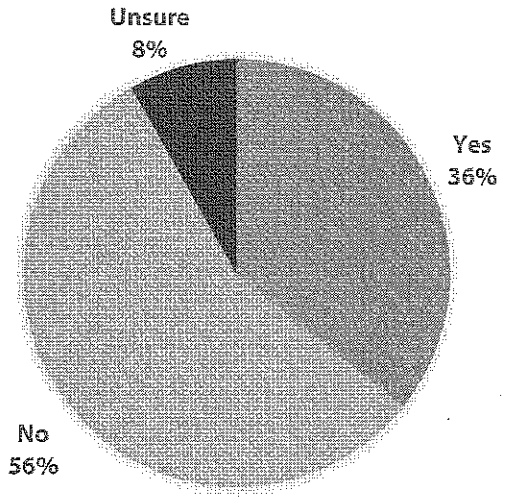

Figure 3: Does Your City Have Telecommunications Towers on Public Property?

Cell towers and telecommunications towers are often placed on public property within city limits. While the median number of cell towers in respondent cities was one, this number can vary tremendously. Portland lists more than 900 cell towers within city limits. Among respondent cities, 36 percent report telecommunications towers on public property. Again, this is most likely to occur in larger cities (with a population more than 10,000) and in the Metro region. Fifty-six percent of respondents do not have telecommunications towers on city property. This is most likely to occur in cities with a population less than 1,250. The monthly lease rate for the property on which these towers stand ranges from $330 per month to $5,000 per month. The lease rate depends on the city and the nature of the individual agreement.

Cities may also charge telecommunications providers to replace wireless attachments on utility poles in the right of way. However, 70 percent of cities do not charge for these attachments.

Cable Franchises

Cable franchises, similar to telecommunications franchises, are the other major category of franchise agreements examined by this survey. Sixty-seven percent of cities surveyed establish cable agreements by ordinance, and 21 percent do so as a contract. These proportions are similar to telecommunications, as is the median length of cable agreements (10.3 years).

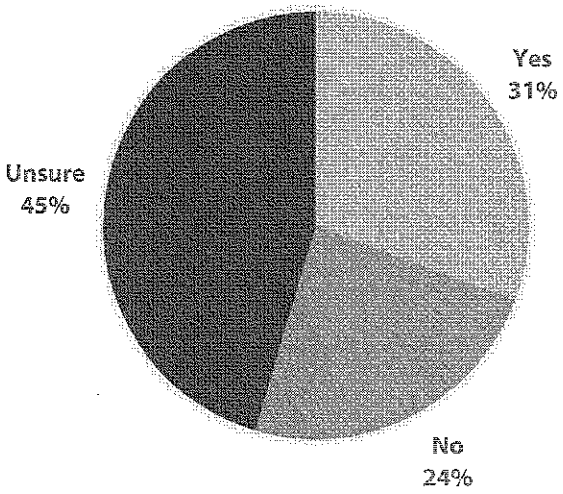

Figure 4: Voice-Over-Internet-Protocol in Cities

There are, however, notable and fundamental differences between cable and telecommunications agreements. Cable franchises in the last several years have begun offering voice-over-internet-protocol (VoIP), which allows for phone calls via internet connection. Thirty-one percent of cities responded to having VoIP as part of their cable franchise agreement. This figure is higher than the League's 2011 survey (26 percent), indicating an increase in the service offered. This service was statistically more likely to be offered in 5th quintile cities as well as in the Metro region.

Large cities and cities in the Metro region were also more likely to have added provisions in their cable agreements. Forty-two percent of cities (66 percent of these in cities with a population greater than 10,000) had additional provisions. The most common added provisions included free or reduced prices for cable in city government facilities, or public, educational and government access (PEG) channels. Like telecommunications, business licenses and taxes are usually not charged to cable utilities. Eighty-two percent of cities do not impose license fees. This is also statistically less likely to occur in the Valley region.

Government Franchises

A city right of way is most often granted to utility providers. This, however is not exclusive to private firms and can also be granted to other government entities. These government franchises can take the form of franchise fees to other governments (cities and special districts) or franchises charged to the city itself. This latter charge (often called an in-lieu-of franchise) is most often used for city business activities as an accounting practice. While 85 percent of cities do not charge government franchises, larger cities and those in the Metro region are most likely to have such arrangements. Most common in-lieu-of franchises are charged for water, wastewater and stormwater utilities. All these are most often owned by the city. Ninety-five percent of cities do not pay franchise fees to other governments.

Other Franchises

While telecommunication and cable franchise fees are large revenue sources in a city, other services provide franchise revenue as well. These include:

- Electric (often the largest source of franchise revenue)
- Natural gas
- Solid waste
- Water
- Wastewater
- Other

Other franchises can vary dramatically based on a city's region and local economy. For example, Salem and Portland both have flat fee franchises charged to universities. Portland has several franchises with private companies that operate oil and gas pipelines, cement production, and sustainable energy.

Analysis

The League has telecommunications revenue data from 58 cities dating back to 2002. Analyzing aggregated data in this manner can be performed in two ways. First, by examining revenues nominally, or by looking at revenue as the simple dollar amount. Issues arise with this figure when considering inflation. Inflation produces a situation in which $10 today will be worth less in the future. As a result, telecommunications revenue is shown below as both nominal and adjusted to account for inflation.

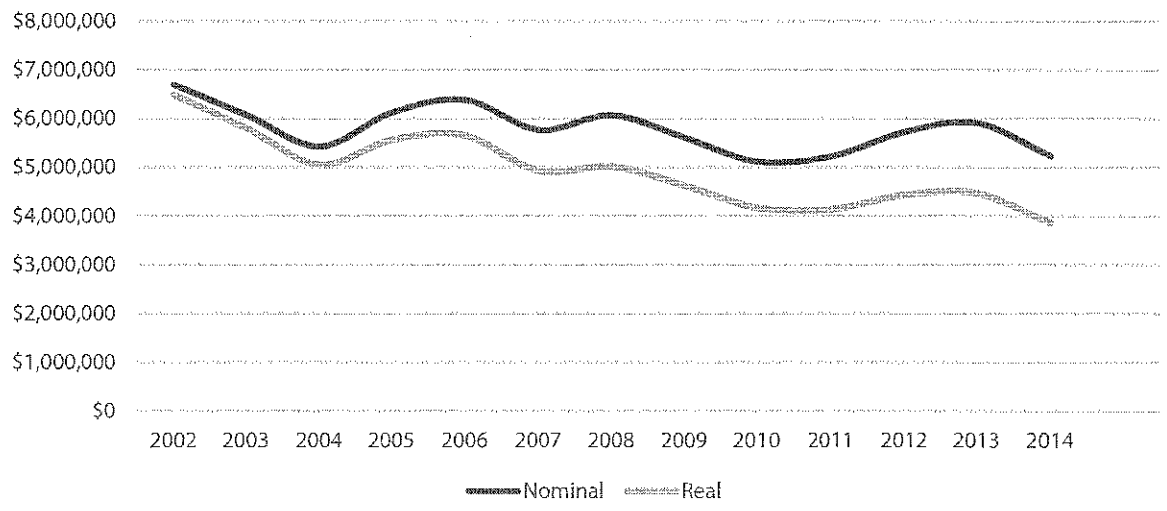

Figure 5: Telecommunications Franchise Revenue

While the nominal data indicates a gradual decline in franchise revenue, the inflation adjusted (or real dollar amount) shows a much steeper decline in the amount of revenue collected by cities from telecommunications utilities (Figure 5). This trend is partially due to the fact that fewer residents use

landline phones. This data indicates that less revenue will be available from telecommunications franchise in the future.

Cable revenues are a more positive trend. Figure 6 shows that even after adjusting for inflation, cable franchise revenue is on the rise. Much of this change can also be explained by changing behavior on the part of the end user, as more and more hours are spent daily using services online. Cable companies also have an advantage in some areas of Oregon with the VoIP services that could displace telecommunications further in coming years.

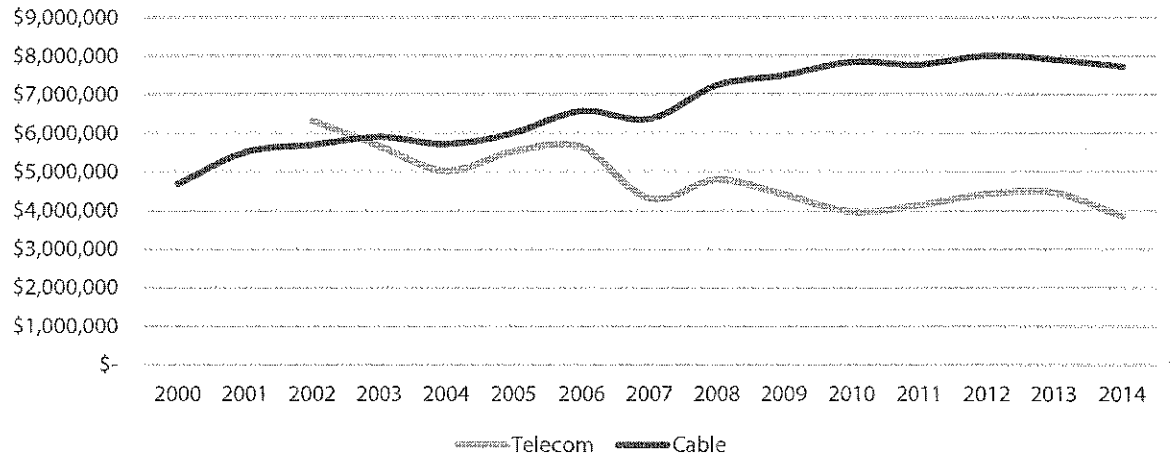

Figure 6: Inflation Adjusted Telecommunications & Cable Revenues

When these two revenue sources are combined, the results (Figure 7) shows that while adjusted for inflation, revenues in telecommunications and cable franchise remain relatively steady. Among the cities for which the League has long-term data, revenue has remained flat since the early 2000s except for a slight downturn during the recent deep recession.

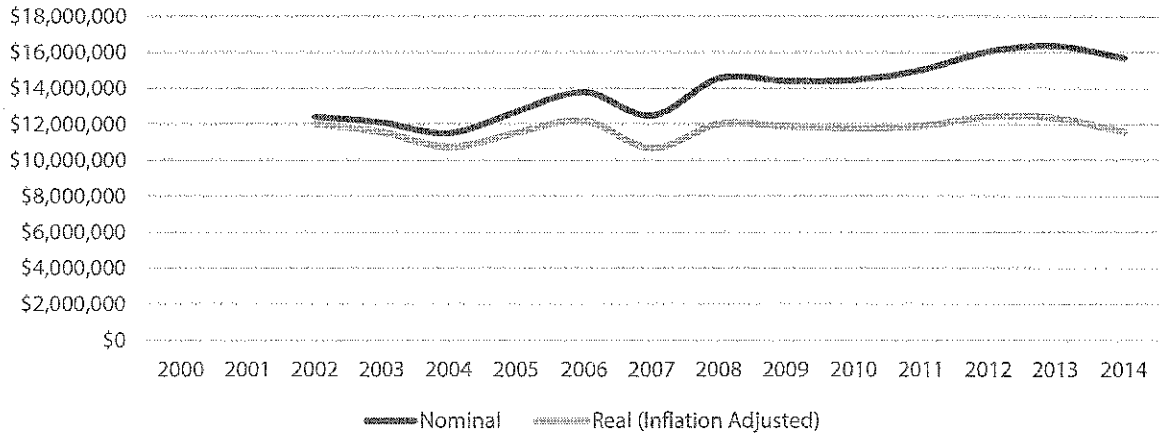

Figure 7: Aggregated Telecommunications and Cable Revenues

It should be noted that this pool of revenue has been flat in these cities for more than 12 years. However, this has not halted the influx of new residents and subsequent increase in population. Larger populations

mean less money per person for essential city services, the results (Table 2) is that cities receive less revenue per capita over time.

Aggregate Telecommunications and Cable Per Capita (2002-2014)		
	Nominal	Real
2002	$ 13.78	$ 13.34
2014	$ 14.45	$ 10.66
Change	*5%*	*-25%*

Table 2: Aggregate Telecommmications and Cable Revenues per Capita

The League has relatively complete data for telecommunications and cable franchise revenue but unfortunately not for other major franchise revenues, such as electric utilities. Yet, for the few cities that have submitted such data in the past, the same trend appears true of electric franchises as well. For the 14 cities that have submitted data, electric utilities revenue has increased 22 percent in the aggregate since 2007. When adjusted for inflation, this number is only 6 percent.

Summary

Charges for the use of a city's right of way take many forms and are often dependent on a city's size, location and history. In general, larger cities and those in the Metro region tend to have the most complex franchise agreements, as well as the most unique sources of franchise revenue. Universally, however, franchises represent an essential revenue source for all Oregon cities.

Analysis of city revenue over the last decade reveals that franchise revenue is either steady or in decline. In most circumstances, these revenue sources are spread increasingly thin due to population growth. While telecommunications and cable were the primary focus of the research, this trend appears to be true for other franchises as well.

Appendix A: Responses by Question

Note: Due to the volume of individualized city responses, some responses have been excluded from this report. For detailed information, please contact Paul Aljets at paljets@orcities.org.

Q13. Are your telecom franchise agreements established by contract, city ordinance, or other methods?					
Contract		*Ordinance*		*Other*	
#	%	#	%	#	%
21	23%	77	86%	9	10%

Q13. Other Responses
No Agreements
City Council Resolution
Ordinances for all individual franchise agreements still in effect, plus a 2008 ordinance establishing licensing process for new and renewing franchises, with the exception of Comcast cable due to specific FCC regulations.
Written agreement w/charter advanced & charter fiberlink at 6%. In lieu of franchise at 5%
We have never made any telecom franchise agreements.
I don't know.
City Resolution if utility company agrees to sign city's standard franchise agreement without modification.
No franchise agreements for telecom, Privilege Tax in Troutdale Municipal Code adopted by ordinance.
Ordinances, resolutions and licenses

Q14. What is the Length of time of your telecom franchise agreements?
Common Responses
3 Years (2)
5 Years (8)
5 to 10 Years (2)
10 Years (29)
12 Years (1)
15 Years (4)
19 Years (1)
20 Years (8)
10 to 20 years (2)
15 to 20 years (1)
Open Ended (2)
Other Responses
20 (CenturyLink) and 6 (Wave)
5 years for CLEC and 10-20 years for ILEC
All of our providers follow our privilege tax ordinance and we do not have franchise agreements
Cal-Ore and Hunter-5 Years; and all others 10 years

Q14. What is the Length of time of your telecom franchise agreements? (Cont'd)
Century Link - 5 years; Charter - 10 years; CoastCom - 5 years; Oregon Fast - 10 years; Alaska Communications 5 years
CenturyLink - Annually, LSN - 10 years
CenturyTel - 20 years, CoastCom - 7 years
Currently extension agreement for one year; negotiating a new 10-year agreement
Depends on agreement- typically 7 years for new franchises, and 10 for renewals. Cenutrylink had 20 yr. agreement.
Frontier - 15 years and Sprint - 5 years
MINET - 10 YEARS; QWEST - 20 YEARS; US SPRINT 12 YEARS
No telecom franchise agreements in effect any longer. 5-year licenses are now granted to utility operators per Ordinance 2008-2703.
Qwest 20; LS Networks and Astound 5 each

Q15. Does your city have any other form of compensation as a result of your telecom franchises?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
13	15%	67	78%	6	7%

Q16. Please describe
Ability to request conduit in the build at marginal cost
City receives approximately $100,000 per year in franchise fees from the telecom franchises.
CoastCom provides service to City Hall at no charge.
Discount fiber rates in exchange for allowing equipment to be placed on towers.
Franchise fee and linear foot fee on ELI ($3 per foot) when greater than Franchise Fee.
Free Cable
Question is somewhat confusing in that we do receive a 5% privilege tax as outlined above. Not sure what other intent is behind the question.
See franchise fees above.
The percentage as listed in the franchise. It is generally submitted quarterly from sales the franchise provides to our community.
Use of a specified number of dark fiber strands.
We receive the 7% revenue

Q17. Does your city have a general business license fee/tax which telecom providers must pay?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
13	15%	70	79%	6	7%

Q18. How much revenue was generated from the general business license fee on telecom providers for FY 2014-2015?
$15 (2)
$50 per year
$100
$200
$225
$300
$700
$ 110 (applies to CoastCom only)
Confidential
Less than $1,000
None
None, fee is waived for franchised utilities
Unsure of total, but the general business license fee is $100 a year.

Q19. What is the rate and methodology of the general business license fee?
$15 Annual Business License Fee
$50 flat annual rate for all businesses
$50 per year
$75/year each
$15 annual fee
2.2% of net
$50
Above Answered
Basic rate with variables depending on if office is in City Limits and how many employees
Employees located within the city limits
Fixed nominal fee based on number of employees
flat rate based on number of employees

Q20. Does the general business license fee offset the franchise fee or is it required to pay both?					
Fee offsets franchise fee		*Both must be paid*		*Unsure*	
#	%	#	%	#	%
3	23%	9	69%	1	7%

Q21. Does your city charge a permit fee for operating in the right of way for telecom?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
15	17%	63	72%	9	10%

EXHIBIT G

Q21. Does your city's telecom franchise agreement waive permit fees for franchised telecom providers?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
9	41%	11	50%	2	9%

Q18. How much permit fee revenue was collected from telecom providers for FY2014-2015?
300
$0 (3)
Less than $1,000 and not separately tracked in the financial system
Minimal

How many cell towers and/or antennas are located in the city?
0 (33)
1 (16)
2 (4)
3 (3)
4
4.5
5
6 (2)
7 (2)
10
12
14
17
18
27
34
37
900
This is something that we do not track. Unsure of the total number.

Q25. Is city property being used as a site for any telecom towers and/or antennas?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
30	36%	47	56%	7	8%

Q26. What is the monthly lease rate?
$0 (3)
$750 (2)
$1,000
$1,100
$1,265.32
$1,400
$1,500
$1,900.15
$2,000
5,000
$1,600-$3,500
$1,860 and $2,337
$2,252/month
1,000 average
2 sites, $1,296 each, $2,592 total/mo.
Airport $1,043.82/ water $1,772.60, $788.66, $1,050.59, $2,585.80, $1,671.67, $2,185.45
Annual rental charge $1,500
depends on contract- between 1,300 and 1,800 pm
In 2012 it was $600 per month with an annual CPI adjustment based on 20 City ENR. Current Rate is $669.10/month
Lease 1) Lease of city-owned property $992.13/month ($11,902.50 paid annually with 15% increase every 5 years);Lease 2) Lease space on water tower $4,502.10/month (3% annual increase)Lease 3) Lease space on water tower $3,434.67/month (3% annual increase)Lease 4) Lease space on water tower $3,815.00/month (3% annual increase)NOTE: Water tower leases vary by number of antennas and ground space rented.
Site 1 $997, Site 2 $532, Site 3 $1,069
Varies
Varies based on site current lease rates range from $1,000 to 2,050 per month.
Varies between $330 - $1,332 per month
Varies, but I believe only 2 City sites are being used. Leased at $150/per month.

Q27. Does your city charge for wireless attachments on utility poles in the right of way?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
10	12%	60	70%	16	19%

Please describe the amount and method of collection (i.e. $500 per month, 5% of gross revenue, etc.)
$5,000 per attachment
$5,849.29 - $6,083.26 per year per site. Varies based on agreement.
$5.50 per pole per year for utilities, $25 per pole per year for private parties other than utilities. We invoice for payment.
$50 per month
$7500/pole/year + annual accelerator of either CPI or flat percentage
5% or minimum fee
7% of gross
Currently we are not aware of any antennas on utility poles but if we were approached we would treat these like a telecommunications franchise so minimum fee of $1,000 per quarter.
This has not been determined, but we will charged something.
We have not had any wireless attachments in the ROW but we intend to charge when they show up. Method is currently undetermined.

Q34. Are your cable franchise agreements established by contract, city ordinance or other methods?					
Contract		*Ordinance*		*Other*	
#	%	#	%	#	%
19	21%	60	67%	10	11%

Q34. Other Responses
Based on an IGA with the Mt. Hood Cable Regulatory Commission (MHCRC) handles all cable franchise agreements, enforcement, and fee collection. The City receives a NET distribution each year AFTER funding the MHCRC's annual budget.
City Council Resolution (2)
Contract are negotiated by MACC and adopted by resolution or ordinance.
Mt. Hood Regulatory Commission by intergovernmental agreement bargains on our behalf, and while adopt an ordinance with the franchise terms, all activities are through Mt. Hood Regulatory Commission.
Negotiated by Metropolitan Area Cable Commission for Washington County cities - Council adopts contract by ordinance.
No Agreements-No Cable Company
No known cable franchise companies in area

Q14. What is the Length of time of your telecom franchise agreements?
Common Responses
5 Years (6)
8 Years
10 Years (36)
12 Years (3)
13 Years
15 Years (6)
20 Years
10 & 15 Years (2)
Other Responses
10 years Comcast and 15 years Frontier
5 years increment and is new and franchisee is setting up the process/system to be "able" to provide such service. It will be at 7% of gross sales (minus federal taxes).
Auto Renewed
Same as Telecommunications
Existing agreement for Verizon is 15 years, 10 years for Comcast, and all other cable operators are under the 5-year licensing structure.

Q36. Does your city provide Voice-over-Internet-Protocol?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
23	31%	18	24%	34	45%

Q37. What is the annual revenue from VoIP?
$0 (6)
$70,041
$93,104
$116,050.47
$536,173.81 FY 2014-15
This is included in their Gross Revenue calculation and is not separated out.
Included above under Telecom providers
Lumped in with cable franchise fees identified under MACC
Not listed Separately.
Not separated from cable/telecom
Nothing Yet, but they will have the capability in the near future. Franchise written as such.
Unknown (2)
Unsure from summary of revenues provided as subject to franchise fees?
VoIP revenue is captured through City's utility license code and under code, specific revenue for licensees is confidential.

Q38. Do the city cable franchise agreements include additional service provisions?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
32	42%	28	36%	17	22%

EXHIBIT G

Q39. Please list the additional services provided.
Funding for regional grant programs, funding for the regulatory commission, funding for local access and locally originated programming all provided through the franchise agreements.
Service to public buildings, PEG channel.
$1 subscriber per month for PEG/INET capital support 5 PEG channels -- more available per agreement but not being used 1 free limited basic drop to City facilities.
1 Basic Cable service at City facilities.
1% gross revenue PEG fees for capital equipment plus studio rent for local access station.
Access to one municipal building public access channel.
Additional public, education, and government access channels
community access channel
Community Access: HD channels, VoD, live video transport, 1% gross rev funds for capital costs Community Grants: 1% gross rev funds for grants to nonprofits, local gov't, schools, libraries to use access channels and I-Net: layer one transport services for 298 institutional sites throughout County; monthly fee paid to cable company on per site basis.
Educational and government access.
Free basic cable at multiple public facilities (City and School District), and there are also PEG fees that cover PEG Broadcasting facility capital costs.
FREE DROP TO Library and schools
Government Access Channel. Complimentary service to government and schools (They want to take both out during our current negotiations).
Include funding for PEG and provide channels to host PEG programing.
Local Information channel.
MetroEast, PCM, Comcast and the MHCRC worked together to implement ' a major technology change to launch the initial two local channels in a high definition (HD) format, including the channels which carry local government programs. The new channels available to all cable subscribers and is one of the first in the nation to have local community channels delivered in an HD format. Funding for community grants providing critical technology funds for local schools, libraries, nonprofits and local governments to use the Institutional Network (I-Net) and community access channels to support their services, and I-Net fiber network capital construction reimbursement. The MHCRC also provides capital funds to MetroEast Community Media to upgrade the video capabilities at the. Gresham, Fairview and Troutdale city council chambers and the Multnomah County Board
MINET: Emergency Alert System. PEG Channel. Live council feed. Basic service to City Hall, Police Dept, Library PW, Amphitheater, WIMPEG Head-End
PEG Access Support: PEG capital funding equal to 1.5% gross revenues from cable subscribers, PEG channels as designated by franchise, provision of free public building installation and basic cable services, use of interactive nodes (dark fiber) between designated public facilities.
PEG access, digital cable box deployment in government facilities, and a capital grant.
PEG channel

Q39. Please list the additional services provided (Cont'd)
PEG Channel, service to public buildings, EAS capability
PEG fee .80 cents per subscriber paid quarterly. 4- PEG channels Free connection to City Buildings
PEG fees
PEG services through the Tualatin Valley Cable Television services (MACC) and public computer network for 17 public agencies.
Public Access Channels, PEG (Public, Educational & Governmental) funding and access program listings on digital channel guide, and Public Communications Network (PCN).
Public Education Channel
Reserve one local access (Public, Education, and Government) channel for the City. Provide an emergency audio override capability to permit the City to transmit an emergency alert signal to all subscribers. Provide one basic cable service to City Hall
Two non-discreet Public Education Government Access Channel. Installation to Public Facilities with no installation fee or monthly service charge.

Q40. Does your city have a general business license fee/tax which cable providers must pay?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
10	13%	64	82%	4	5%

Q41. How much revenue was generated from the general business license fee on cable providers for FY 2014-2015
$15
$50
$75
$300
Immaterial
Info is proprietary. For those services subject to franchise fees the business license tax due on those services is offset against Franchise fees. However there could be other business lines (not subject to franchise fees) that would be assessed for business license tax.
less than $1,000
No additional as providers are also telecom providers
roughly $200
Unsure Total

Q42. What is the rate and methodology of the general business license fee?
$15 per year business license fee
$50 per year
flat rate
based on employees
$50 flat
2.2% of net income
per employee working in the city limits
$50 flat annual rate all businesses
Home office location and number of employees in Oregon City
Business License is $100 per year.

Q43. Does the general business license fee offset the franchise fee or is it required to pay both?					
Fee offsets franchise fee		*Both must be paid*		*Unsure*	
#	%	#	%	#	%
0	0%	9	90%	1	10%

Q55. Does your city collect franchise fees from any other government entity?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
10	11%	74	85%	3	3%

Q56. Does your city charge franchise fees to itself?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
31	36%	53	62%	2	2%

Q46. Does your city pay franchise fees to other government entities?					
Yes		*No*		*Unsure*	
#	%	#	%	#	%
1	1%	83	95%	3	3%

Appendix B: Survey

Utility & Franchise Fee Survey 2015

Q1 City Name:

Q2 Name of responding person:

Q3 Title of responding person:

Q4 Email Address of responding person:

Q5 In order to accurately analyze and report on your city's utility and franchise fees, **four (4) years of data on telecommunication and cable television franchises** is requested. In the following survey, the League asks questions related to:

-Telecommunications Providers
-Cable Television/Video Providers
-Government Franchise Agreements (In-Lieu-Of Franchises)
-Other Franchises (such as electric, natural gas, solid waste, water and wastewater)

Telecommunication Companies

Terms & Definitions

-ILEC: (Incumbent Local Exchange Carrier) Primary provider of local phone service. Examples: Qwest, Sprint, Verizon, and Centurytel
-CLEC: (Competitive Local Exchange Carrier) Alternative provider competing with ILECs. Examples: ATG and ELI
-Long Haul Carrie: Provider who has facilities in city's right of way, but does not provide services to residence. Usually charged a per foot fee.

Q7 Please list the telecommunication companies contracted with the city as well as the type of provider (ILEC, CLEC, Long Haul Carrier, Other).

	Company Name (1)	Type of Provider (2)
Company 1 (1)		
Company 2 (2)		
Company 3 (3)		
Company 4 (4)		
Company 5 (5)		

EXHIBIT G

Q8 Please list any telecom franchise fees, privilege taxes, and/or per foot fees as well as the revenue generated by these taxes and fees for **FY2011-2012**. Please list in the same order as in Question 7.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)	Per Foot Fee Rate (%) (5)	Per Foot Fee Revenue ($) (6)
Company 1 (1)						
Company 2 (2)						
Company 3 (3)						
Company 4 (4)						
Company 5 (5)						

Q10 Please list any telecom franchise fees, privilege taxes, and/or per foot fees as well as the revenue generated by these taxes and fees for **FY2012-2013**. Please list in the same order as in Question 7.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)	Per Foot Fee Rate (%) (5)	Per Foot Fee Revenue ($) (6)
Company 1 (1)						
Company 2 (2)						
Company 3 (3)						
Company 4 (4)						
Company 5 (5)						

EXHIBIT G

Q11 Please list any telecom franchise fees, privilege taxes, and/or per foot fees as well as the revenue generated by these taxes and fees for **FY2013-2014**. Please list in the same order as in Question 7.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)	Per Foot Fee Rate (%) (5)	Per Foot Fee Revenue ($) (6)
Company 1 (1)						
Company 2 (2)						
Company 3 (3)						
Company 4 (4)						
Company 5 (5)						

Q12 Please list any telecom franchise fees, privilege taxes, and/or per foot fees as well as the revenue generated by these taxes and fees for **FY2014-2015**. Please list in the same order as in Question 7.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)	Per Foot Fee Rate (%) (5)	Per Foot Fee Revenue ($) (6)
Company 1 (1)						
Company 2 (2)						
Company 3 (3)						
Company 4 (4)						
Company 5 (5)						

Q13 Are your telecom franchise agreements established by contract, city ordinance, or other methods? (Check all that apply)

- ❑ Contract (1)
- ❑ City Ordinance (2)
- ❑ Other (Please Describe) (3) _____

Q14 What is the Length of time of your telecom franchise agreements? (Please answer in years)

Q15 Does your city receive any form of compensation as a results of your telecom franchises?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city receive any form of compensation as a results of your franchises? Yes Is Selected

Q16 Please describe

Q17 Does your city have a general business license fee/tax which telecom providers must pay?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q18 How much revenue was generated from the general business license fee on telecom providers for FY 2014-2015?

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q19 What is the rate and methodology of the general business license fee?

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q20 Does the general business license fee offset the franchise fee or is the provider required to pay both?
- ❍ License fee offsets franchise fee (1)
- ❍ Both must be paid (2)
- ❍ Unsure (3)

Q21 Does your city charge a permit fee for operating in the right of way for telecom?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city charge a permit fee for operating in the right of way? Yes Is Selected

Q22 Does your city's telecom franchise agreement waive permit fees for franchised telecom providers?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city's telecom franchise agreement waive permit fees for franchised telecom providers? No Is Selected

Q23 How much permit fee revenue was collected from telecom providers in FY 2014-2015?

Q24 How many cell towers and/or antennas are located in the city?

Q25 Is city property being used as a site for any of these telecom towers and/or antennas?
- ○ Yes (1)
- ○ No (2)
- ○ Unsure (3)

Answer If Is city property being used as a site for any of these telecom towers and/or antennas? Yes Is Selected

Q26 What is the monthly lease rate?

Q27 Does your city charge for wireless attachments on utility poles in the right of way?
- ○ Yes (1)
- ○ No (2)
- ○ Unsure (3)

Answer If Does your city charge for wireless attachments on utility poles in the right of way? Yes Is Selected

Q28 Please describe the amount and method of collection (i.e. $500 per month, 5% of gross revenue, etc.)

Cable Television/ Video Franchises

Q30 Please list any **Cable TV/Video Provider** franchise fees and/or privilege taxes as well as the revenues generated by these taxes and fees for **FY2011-2012.**

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Cable Company 1 (1)				
Cable Company 2 (2)				
Cable Company 3 (3)				
Cable Company 4 (4)				
Cable Company 5 (5)				

EXHIBIT G

Q31 Please list any **Cable TV/Video Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for **FY2012-2013**.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Cable Company 1 (1)				
Cable Company 2 (2)				
Cable Company 3 (3)				
Cable Company 4 (4)				
Cable Company 5 (5)				

Q32 Please list any **Cable TV/Video Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for **FY2013-2014.**

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Cable Company 1 (1)				
Cable Company 2 (2)				
Cable Company 3 (3)				
Cable Company 4 (4)				
Cable Company 5 (5)				

Q33 Please list any **Cable TV/Video Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for **FY2014-2015**.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Cable Company 1 (1)				
Cable Company 2 (2)				
Cable Company 3 (3)				
Cable Company 4 (4)				
Cable Company 5 (5)				

Q34 Are your cable franchise agreements established by contract, city ordinance, or other methods? (Check all that apply)

- ❑ Contract (1)
- ❑ Ordinance (2)
- ❑ Other (Please Describe) (3) _____

Q35 What is the Length of time of your cable franchise agreements? (Please answer in years)

Q36 Does your city cable provider provide Voice-Over-Internet-Protocol (VoIP)?

- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city cable provider provide Voice-Over-Internet-Protocol (VoIP)? Yes Is Selected

Q37 What is the annual revenue from VoIP?

Q38 Do the city cable franchise agreements include additional service provisions? (i.e. community access provisions)

- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Do the city cable franchise agreements include additional service provisions? (i.e. community acc... Yes Is Selected

Q39 Please list the additional services provided.

Q40 Does your city have a general business license fee/tax which cable providers must pay?

- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q41 How much revenue was generated from the general business license fee on cable providers for FY 2014-2015?

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q42 What is the rate and methodology of the general business license fee?

Answer If Does your city have a general business license fee/tax which telecom providers must pay? Yes Is Selected

Q43 Does the general business license fee offset the franchise fee or is the provider required to pay both?

- ❍ License fee offsets franchise fee (1)
- ❍ Both must be paid (2)
- ❍ Unsure (3)

Government Franchise Fees
(In-Lieu-of Franchise Fees)

Q55 Does your city collect franchise fees from any other government entity?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city collect franchise fees from any other government entity? Yes Is Selected
Q45 Please list any Government fees, as well as the revenue generated by these fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)
Telecommunication (1)		
Cable (2)		
Water (3)		
Wastewater (4)		
Electric (5)		
Other (Please Specify) (6)		

Q56 Does your city charge franchise fees to itself?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city charge franchise fees to itself? Yes Is Selected
Q57 Please list any fees the city charges itself (*in-lieu-of fees*), as well as the revenue generated by these fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)
Telecommunication (1)		
Cable (2)		
Water (3)		
Wastewater (4)		
Electric (5)		
Other (Please Specify) (6)		

Q46 Does your city pay franchise fees to other government entities?
- ❍ Yes (1)
- ❍ No (2)
- ❍ Unsure (3)

Answer If Does your city pay franchise fees to other government entities? Yes Is Selected

Q58 Please list any fees paid to other government entities, as well as the expenses accrued by these fees for FY2014-2015.

	Name of Government (1)	Franchise Fee Rate (%) (2)	Franchise Fee Expenditure ($) (3)
Telecommunication (1)			
Cable (2)			
Water (3)			
Wastewater (4)			
Electric (5)			
Other (Please Specify (6)			

Other Franchises

Q48 Please list any **Electric Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

Q49 Please list any **Natural Gas Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

Q50 Please list any **Solid Waste Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

EXHIBIT G

Q51 Please list any **Water Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

Q52 Please list any **Wastewater Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

Q53 Please list any **Other Provider** franchise fees and/or privilege taxes as well as the revenue generated by these taxes and fees for FY2014-2015.

	Franchise Fee Rate (%) (1)	Franchise Fee Revenue ($) (2)	Privilege Tax Rate (%) (3)	Privilege Tax Revenue ($) (4)
Company 1 (1)				
Company 2 (2)				
Company 3 (3)				
Company 4 (4)				
Company 5 (5)				

Q54 Additional Comments?

EXHIBIT G

EXHIBIT 2

Oregon City and Happy Valley Responses to OTA Comments

(attached behind this coversheet – 3 pages)

EXHIBIT G

Beery Elsner & Hammond LLP

On behalf of Oregon City, Oregon and Happy Valley, Oregon, please see the following points that may be relevant to the League of Oregon Cities' joint reply in the FCC Dockets related to Accelerating Wireline Broadband Deployment, particularly in response to the Comment filed by the Oregon Telecommunications Association ("OTA"):

1. OTA states: "The license fee is a flat fee developed by the city and charged on an annual basis. In most ordinances there is an additional right-of-way use fee based on a percentage of gross revenue derived from service in the city. Then, in many cases there is an additional requirement to register and pay a registration fee above the license fee. In some cities the registration is an annual requirement. In others, registration is valid for two or three years. Municipalities that operate communications networks are usually exempted from registration." Every statement quoted is not true with respect to Oregon City and Happy Valley. OTA has not presented any evidence that either City has effectively or actually prohibited the deployment of broadband, nor can it. Oregon City currently has at least five communications companies providing broadband services, and Happy Valley has at least three.
2. The City of Oregon City enacted its Utility Rights of Way Ordinance in 2013 in an effort to "effectively, efficiently, fairly and uniformly manage the City's [rights of way]" by granting licenses to telecommunications providers and other utilities that need access to the rights of way. The Ordinance replaced a system in which entities negotiated franchise agreements with the City. The City of Happy Valley enacted its Utility Rights of Way Ordinance in 2016 with the same purpose quoted for Oregon City. Both Ordinances apply to all utilities (not just telecommunications providers) that own or use facilities in the rights of way to provide service in the City, including City-owned utilities and other governmental entities' utilities.
3. At the time Happy Valley enacted its Ordinance, both CenturyLink and Frontier had been operating without franchise agreements for well over a decade, despite an Ordinance requiring franchises for use of the rights of way. Each company had refused to enter into such agreements, arguing Section 253 preempted the City from requiring franchises. Long after courts rejected this position, both companies had continued to operate without a franchise.
4. Since enacting their Ordinances, neither City has denied a request for a license. In fact, only three of OTA's members have sought a license or franchise with the cities (Frontier, CenturyLink and Clear Creek), all of which were readily granted. OTA's comments provide no support for the proposition that rights of way license ordinances in any way prohibit the provision of services. To the contrary, Oregon City has had the opposite experience. Oregon City has issued four telecommunications licenses since enacting its Ordinance, most of which took less than a week to issue and none took longer than two weeks. (Five other companies continue to operate under franchises that pre-date the Ordinance.)
5. Oregon City's license application fee is $50.00 and is due only with a license application, not annually. (The license term is 5 years.) The fee is expressly limited to the amount

necessary to recover the city's costs related to processing the application for the license and is comparable to other City application fees. Oregon City also has a $50.00 registration requirement, which *does not apply* to any entity that has a license or franchise for use of the rights of way. Registration is required annually for companies that do not have a license or franchise, but there is no revenue-based or other fee beyond the registration application fee referenced in the previous sentence.

6. Happy Valley's license application fee is $250.00 and is due only with a license application, not annually. (The license term is 5 years.) The fee is expressly limited to the amount necessary to recover the city's costs related to processing the application for the license and is comparable to other City application fees. Happy Valley also has a $250.00 registration requirement, which *does not apply* to any entity that has a license or franchise for use of the rights of way. Registration is required annually for companies that do not have a license or franchise, but there is no revenue-based or other fee beyond the registration application fee referenced in the previous sentence.
7. Neither City has a "license fee [that] is a flat fee developed by the city and charged on an annual basis," nor any other annual fee other than as described above.
8. Oregon City's Right of Way Use Fee for communications providers is 5% of gross revenues derived from the operation of the utility system in the City, subject to applicable state and federal law preemptions (discussed below). For entities that do not earn revenue in the City, there is a fee of $2.75 per linear foot of facilities in the rights of way. These fees are the same as the franchise fees the City previously received through franchise agreements. Specifically, the per foot fee is based on negotiations with competitive local exchange carriers, several of which have paid this per foot fee for years without any indication it effectively prohibited them from providing services. The City enacted the Right of Way Use Fee at the same rate these franchisees were paying to avoid placing them at a competitive disadvantage relative to new licensees.
9. Happy Valley's Right of Way Use Fee for communications providers is 7% of gross revenues derived from the operation of the utility system in the City, subject to applicable state and federal law preemptions (discussed below). This rate is the same as the franchise fees the City previously received through franchise agreements. For entities that do not earn revenue in the City, there is a minimum annual fee ranging from $5,000 to $15,000, depending on the extent of the utilities' use of the rights of way.
10. Both cities have an "attachment fee" of $5,000 per attachment that applies to entities whose only facilities in the City are single pole attachments such as wireless antennas; it does not apply to cables and fiber strung between poles and would not be charged in addition to the Right of Way Use Fee.
11. Contrary to OTA's assertion that these ordinances are "revenue generating schemes," in enacting their Ordinances, both Oregon City and Happy Valley found that the Ordinance would not generate new revenue from existing franchisees. Any new revenue would come from entities using the rights of way without a franchise and thus not paying the City for such use. Rather than "scheming" to generate more revenue, the Cities actually moved toward a more equitable and competitively neutral fee structure. Further, Oregon City has done a cost study to calculate the estimated costs of managing the ROWs (not including restoration, repairs and rebuilding), which is attached. The analysis shows that

the City's ROW fees (including franchise fees from franchises that predate the ROW ordinance or are not covered by the ROW ordinance) are about $2.9 million annually, and its ROW-related costs are about $10.5 million annually.

12. Both Cities impose a Right of Way Use Fee on a municipal entity (Clackamas County) that owns a communications network within the Cities.
13. Both Cities' Right of Way Use Fees are subject to applicable state and federal preemptions, including that established in ORS 221.515. OTA's Comments contain misstatements regarding ORS 221.515, a statute that preempts City authority relative to ILECs by limiting the Fees to 7% of revenue from a narrow portion of the ILEC's revenue, exchange access services. OTA states: "Oregon municipalities have concluded that the state law applies only to incumbents and not to competitive local exchange carriers." This is not "municipalities'" conclusion. This is the Oregon Supreme Court's conclusion. *See US West Communications, Inc. v. City of Eugene*, 336 Or. 181 (2003). In fact, LOC has worked to repeal ORS 221.515 to eliminate the distinction between ILECs and CLECs established by this statute, which was introduced and lobbied for by U.S. West, the predecessor of OTA member CenturyLink, in 1989. OTA members have opposed the repeal effort.

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EXHIBIT G

EXHIBIT 3

Declaration of Ryan Bredehoeft

(appears behind this coversheet – 5 pages)

EXHIBIT G

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

TRI-CITY SERVICE DISTRICT,

Plaintiff,

v.

OREGON CITY, a municipality and public body within the State of Oregon,

Case No. CV 14060280

DECLARATION OF RYAN BREDEHOEFT IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, Ryan Bredehoeft, hereby declare:

1. I am the Business Analyst for City of Oregon City ("City"). I make this declaration based upon my personal knowledge and am competent to testify in the matters herein stated.

2. I am a certified public accountant and have worked for the City of Oregon City for approximately 18 months. As the Business Analyst for the City, my duties include accounting, auditing, and fiscal management; participating in the development of departmental budgets; designing and analyzing financial records and systems; and producing forecasts of business/operating expenses and economic/financial conditions for all City departments.

3. Attached hereto as Exhibit A is a calculation of the City's revenue for use of the rights of way for fiscal years 2012, 2013 and 2014, and the first half of fiscal year 2015. This revenue includes franchise fees and, beginning in calendar year 2014, Right of Way Usage Fees. The total revenue received by the City from the Right of Way Usage Fee and franchise fees for the fiscal year 2014 is $2,892,700.43.

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4. For the calendar year 2014, Tri-City Service District's Right of Way Usage Fee payments totaled $188,300.49.

5. Attached as Exhibit B to this Declaration is a Cost Analysis of the Right of Way ("Cost Analysis"), which I developed for the City. The Cost Analysis reflects the City's estimated annual costs of owning, managing and maintaining its rights of way, which is $10,510,804.00.

6. I developed the cost study by identifying all departments in the City that provide services or have work activities directly related to the rights of way ("ROW Departments"). For each ROW Department, through discussions with appropriate personnel, I determined the percentage of the ROW Department's costs attributable to the rights of way. I applied these percentages to the total costs of each ROW Department, based on each ROW Department's actual costs in fiscal year 2014, to arrive at the total right of way cost for each ROW Department.

7. In addition, I calculated the costs of City departments that do not directly support the rights of way, but which provide support for the ROW Departments ("Support Departments"). This calculation captures costs, such as computer support and vehicle costs, that are not included in the ROW Departments' costs as described in paragraph 6. To calculate this cost, I first calculated the relative percentage of use of the Support Departments by each ROW Department by dividing the labor costs of each ROW Department by the total labor costs of all ROW Departments and Support Departments. (For example, if a ROW Department has 25% of the labor costs, the assumption is 25% of Support Department costs are attributable to that ROW Department.) I applied this percentage to the City's actual costs for fiscal year 2014 for each Support Department (not including costs of a Support Department that are not attributable to the rights of way or a ROW Department) to arrive at the proportion of Support Department costs attributable to each ROW Department. Finally, I multiplied

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the proportion of Support Department costs for each ROW Department by the percentage of ROW Department costs allocated to the rights of way as described in paragraph 6 to calculate the total Support Department costs attributable to the rights of way.

8. I also calculated the depreciation expense and carrying costs of the capital assets of each ROW Department that are in or serve the rights of way ("ROW Assets"), which expenses are not captured in the costs described in paragraphs 6 and 7. To calculate the depreciation expense, I applied the same percentages of costs for each ROW Department as described in paragraph 6 to the actual depreciation expense in fiscal year 2014 for each ROW Asset. To calculate the carrying costs, I multiplied the City's cost of capital by the total ROW Assets.

I HEREBY DECLARE THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND I UNDERSTAND THEY ARE MADE FOR USE AS EVIDENCE IN COURT AND SUBJECT TO PENALTY FOR PERJURY.

DATED this 26 day of February, 2015.

Ryan Bredehoeft

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EXHIBIT G

	2013	2014	2015 YTD (thru 12/31/2014)
300 - GENERAL FUND			
199 - POLICY & ADMIN - NON-DEPARTMENTAL			
300-199-211 - PORTLAND GENERAL ELECTRIC	$ 840,445.18	$ 847,758.52	
300-199-212 - TELEPHONE FRANCHISE	$ 81,136.45	$ 249,501.42	$ 9,069.34
300-199-213 - NORTHWEST NATURAL GAS	$ 249,761.39	$ 268,710.87	
300-199-214 - CABLE TV	$ 230,284.98	$ 238,930.59	$ 60,583.71
300-199-215 - WATER FUND FRANCHISE FEE	$ 306,756.96	$ 254,050.14	$ 154,806.75
300-199-216 - SEWER FUND FRANCHISE FEE	$ 159,999.96	$ 218,491.41	$ 88,888.08
300-199-217 - STORM DRAIN FUND FRANCHISE FEE	$ 93,024.00	$ 137,706.24	$ 57,618.00
300-199-218 - OTHER FRANCHISES AND ROWS FEES		$ 12,856.16	$ -
300-199-220 - RIGHT OF WAY APPLICATION FEES		$ 1,200.00	$ 400.00
300-199-225 - CC INTERIM RIGHT OF WAY	$ 21,000.00	$ 9,910.00	
300-199-227 - CC RIGHT OF WAY USAGE		$ 9,270.00	$ 3,090.00
300-199-231 - ROW USAGE-CABLE		$ 3,421.96	
300-199-232 - ROW USAGE-TELECOMMUNICATIONS		$ 17,274.22	$ 39,477.31
300-199-233 - ROW USAGE-WATER		$ 36,713.41	$ 41,042.41
300-199-234 - ROW USAGE-SEWER		$ 84,504.33	$ 51,012.32
300-199-235 - ROW USAGE-GAS			$ 26,320.75
315 - CITY CLEANUP FUND			
199 - CLEANUP OPERATIONS			
315-199-231 - GARBAGE FRANCHISE	$ 199,460.59	$ 208,674.62	$ 56,172.45
341 - OREGON CITY ENHANCEMENT FUND			
200 - OREGON CITY ENCHANCEMENT			
341-200-351 - DUMPING FRANCHISE FEE	$ 120,378.50	$ 133,010.48	$ 36,235.46
409 - CABLE TV SYSTEMS IMPROVEMENT F			
200 - CABLE TV OPERATIONS			
409-200-214 - CABLE FRANCHISE FEES	$ 153,523.32	$ 160,716.06	$ 40,389.16
	$ 2,455,771.33	$ 2,892,700.43	$ 665,105.74

EXHIBIT G

COST ANALYSIS of the OREGON CITY ROW

FUND	DEPARTMENT	a*	ROW allocation %	operations and maintenance: Labor FTE	Labor Salaries & Benefits	Non-Labor Materials & Services	O&M allocated to ROW	b*	support department costs allocated to user departments	allocated to ROW	Depreciation	allocated to ROW	Net Asset Balance	allocated to ROW
300 - GENERAL FUND	011 - POLICY & ADMIN - CITY COMMISSION	x	4.29%		-	105,520	$ 4,527		$ -	$ -	$ 338,697	$ 46,095.78	$ 10,275,354	$ 1,398,448
	012 - POLICY & ADMIN - CITY MANAGER	x	4.29%	1.00	262,127	20,411	$ 12,121		$ 28,391	$ 1,218				
	013 - POLICY & ADMIN - CITY RECORDER	x	1.85%	3.00	349,850	65,920	$ 7,692		$ 37,892	$ 701				
	014 - POLICY & ADMIN - LEGAL	x	6.23%		-	382,441	$ 22,576	x	$ -	$ -				
	015 - POLICY & ADMIN - HUMAN RESOURCES			2.19	272,696	84,708		x	$ 39,557					
	016 - POLICY & ADMIN - FINANCE			5.72	619,032	111,833		x	$ 67,046					
	020 - POLICY & ADMIN - INFORMATION SERVICES			0.50	67,091	343,731		x	$ 7,267					
	041 - POLICY & ADMIN - MUNICIPAL COURT	x	85.57%	4.44	423,983	146,029	$ 487,760		$ 45,921	$ 39,294				
	071 - POLICE OPERATIONS	x	20.58%	50.00	5,536,939	518,346	$ 1,246,178		$ 599,696	$ 123,417				
	073 - POLICE SUPPORT SERVICES	x	20.58%	-	809,407	250,145	$ 218,056		$ 87,665	$ 18,042				
	074 - POLICE COMMUNICATIONS	x	20.58%		-	319,288	$ 65,709		$ -	$ -				
	161 - PARKS MAINTENANCE	x	0.08%	11.35	832,416	389,065	$ 977		$ 90,138	$ 72				
321 - DOWNTOWN PARKING FUND	222 - SHUTTLE OPERATION	x	0.00%	-	6,030	13,196	$ -		$ 653	$ -	$ 36,655	$ 32,937	$ 549,824	$ 494,059
	200 - PARKING OPERATIONS	x	95.00%	1.31	179,795	60,176	$ 319,102		$ 39,896	$ 38,376				
351 - COMMUNITY DEVELOPMENT	053 - GIS	x	40.00%	1.03	133,784	42,721	$ 70,602		$ 14,490	$ 5,796	$ 8,653	$ 1,751	$ 162,008	$ 32,048
	061 - PLANNING / DEVELOPMENT REVIEW	x	17.49%	4.63	566,179	990,696	$ 223,323		$ 61,319	$ 10,734				
354 - CODE ENFORCEMENT	200 - CODE ENFORCEMENT	x	0.41%	4.00	529,605	37,431	$ 931		$ 20,636	$ 84	$ -	$ -	$ -	$ -
357 - ENGINEERING GROUP FUND	065 - DEVELOPMENT SERVICES	x	90.00%	3.85	382,283	84,815	$ 421,741		$ 41,567	$ 37,410	$ 896	$ 807	$ 13,445	$ 12,101
401 - STREET FUND	122 - STREET OPERATIONS	x	70.00%	11.26	994,204	378,265	$ 960,729		$ 107,681	$ 75,376	$ 404,506	$ 283,154	$ 16,135,888	$ 11,295,122
	125 - STREET CAPITAL OUTLAY	x	70.00%		-	107	$ 75		$ -	$ -				
	126 - ELEVATOR	x	70.00%		-	231,827	$ 162,279		$ -	$ -				
415 - TRANSPORTATION UTILITY	405 - TRANSPORTATION MAINTENANCE	x	100.00%		-	350,900	$ 250,900		$ -	$ -	$ 126,429	$ 126,429	$ 9,133,152	$ 9,137,152
503 - WATER FUND	151 - WATER OPERATIONS	x	0.40%	13.27	1,409,650	2,852,568	$ 17,049		$ 152,677	$ 611	$ 481,805	$ 1,727	$ 25,970,741	$ 103,883
	154 - WATER CAPITAL CONSTRUCTION	x	0.40%		-	107	$ 0		$ -	$ -				
	156 - WATER DEBT SERVICE	x	0.40%		-	700	$ 3		$ -	$ -				
502 - SEWER FUND	181 - SEWER OPERATIONS	x	0.40%	8.705	806,211	791,124	$ 6,397		$ 87,536	$ 350	$ 825,529	$ 3,302	$ 31,371,302	$ 125,485
	182 - TRI-CITY COLLECTIONS	x	0.40%		-	3,318,946	$ 13,244		$ -	$ -				
	184 - SEWER CAPITAL OUTLAY	x	0.40%		-	23,685	$ 95		$ -	$ -				
	185 - DEBT SERVICE	x	0.40%		-	400	$ 2		$ -	$ -				
521 - STORM DRAIN UTILITY	161 - STORM DRAINAGE OPERATIONS	x	70.00%	10.365	970,208	693,993	$ 1,164,941		$ 105,082	$ 73,557	$ 166,407	$ 116,485	$ 11,029,525	$ 7,720,527
	184 - STORM DRAINAGE CAPITAL OUTLAY	x	70.00%		-	2,269	$ 1,588		$ -	$ -				
569 - UTILITY BILLING FUND	152 - UTILITY BILLING OPERATIONS	x	0.83%	5.70	$37,553	334,807	$ 8,000		$ 57,138	$ 530	$ 3,489	$ 32	$ 52,337	$ 485
411 - STREET SDC	401 - STREET DEVELOPMENT-SDC	x	100.00%		-	101,198	$ 101,198		$ -	$ -	$ 900,143	$ 900,143	$ 36,135,207	$ 36,135,207
511 - WATER SDC	501 - WATER DEVELOPMENT	x	0.40%		-	14,461	$ 58		$ -	$ -	$ 134,054	$ 536	$ 8,040,245	$ 32,173
512 - SEWER SDC	502 - SEWER DEVELOPMENT	x	0.40%		-	119,310	$ 477		$ -	$ -	$ 104,946	$ 420	$ 4,222,208	$ 16,889
522 - STORM DRAIN SDC	521 - STORM DRAIN DEVELOPMENT	x	70.00%		-	1,865	$ 1,306		$ -	$ -	$ 51,998	$ 36,399	$ 3,319,875	$ 2,323,913
611 - PARKS SDC	606 - PARKS DEVELOPMENT-SDC	x	0.07%		-	11,054	$ 8		$ -	$ -	$ 167,238	$ 117	$ 9,555,056	$ 6,689
559 & 561 - FLEET MAINTENANCE	131 - FLEET SERVICE & MAINTENANCE				-	217,250		x	$ -		$ 588,379		$ 5,902,283	
					15,488,684	13,269,624	$ 5,838,702			$ 415,560		$ 1,552,335		$ 64,694,180
														4.18%
							$ 5,838,702			$ 415,560		$ 1,552,335		$ 2,704,217

a identified as having work activities directly related to the ROW

b identified as having work activities that indirectly support departments that perform ROW activities

Portion of Oregon City's costs (on an annual basis) that are associated with the ownership, management and maintenance of the ROW $ 10,510,814